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THE

SOLICITORS' JOURNAL

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The Century Ahead

OLIVER GOLDSMITH once wrote that laws grind the poor and the rich men rule the law. During the century of this Journal's life the trend of the law, despite some reactions and hesitations, has been to redress the balance and to protect the weak from the strong, the poor from the rich and the simple from the cunning. It has both restricted and enlarged freedom. The result is that we are much governed —some would say over-governed; the fact remains that the law plays a significant part in the lives of us all. Like life, law has become more complex and, as its importance to the individual has increased, so too has the importance of the lawyer. The purpose of solicitors is to serve the law and within the law to secure to the best of their abilities the freedom, prosperity and happiness of their clients, while the purpose of this Journal is to help solicitors to do this.

Our primary function is to inform. The knowledge which the modern solicitor needs would stagger his ancestor of a century ago. It is not enough to know the law; solicitors must be aware of the rapidly changing social, economic, scientific, industrial and political scene. There is a limit to the load which any man or woman can carry; the only way to bear our present load is to specialise and spread it. An important function of a legal paper is not only to inform the specialists but also to keep them in touch as comprehensibly as possible with those branches of the law in which they do not specialise.

No profession can survive unless it keeps pace with the present and adopts modern methods. Solicitors see more closely and frequently than other people the injustices and inconveniences which are caused by imperfect laws. In 1857 we said: " . . . where judicious changes in law have been at length effected the movement has either been originated or materially assisted by that practical knowledge of the working of legal machinery which is the peculiar province of the solicitor." That is a bold claim. Solicitors advise their clients without regard to the financial benefit or detriment which their advice may bring to themselves. It is equally clearly the duty of the profession to press for changes in law and procedure if what exists is obsolete. For example, the attitude of this Journal to the registration of title to land at first was hostile and then only cautious. Now we do not doubt that the public interest demands the extension of compulsory registration as quickly as our resources permit. Again, the legal profession takes pride in the welcome and encouragement which it has given to legal aid, which did not have to be forced on protesting lawyers by Parliament.

There are some who believe that lawyers can comfortably administer the law without inquiring whether it is good or bad. We believe that law reform is too important to be left entirely to the politicians. We hope we shall continue to have a critical and inquiring mind and " to have strength to change what can be changed, fortitude to endure what cannot be changed and wisdom to distinguish one from the other." Law's only justification is that it makes human beings happier, more secure and more prosperous, but we must beware of being smothered by the laws which are designed to protect us. More than ever in this age of collectivism solicitors have a particular responsibility to preserve and enlarge the liberty of the individual and to keep in the forefront the principle that the State exists for the benefit of the people and not the reverse.

To inform and, where necessary, to reform. These are two of our objects. Our third is to safeguard the legitimate interests of the solicitors' profession—and we return for the last time to our issue of 3rd January, 1857, when we declared that " this our Journal owes its origin . . . to the conviction long entertained by solicitors in town and country that their branch of the legal profession ought to be represented by a newspaper established and conducted by themselves, reflecting their opinions, watching over their interests and reputation and urging upon the legislature and the nation their just and reasonable demands."

BIRTHDA

From The Lord Chancellor
The Rt. Hon. Viscount Kilmuir, G.C.V.O.:

It gives me much pleasure to send this message of congratulations and good wishes to the "Solicitors' Journal" on the occasion of the celebration of its centenary. Many generations of lawyers, not only from the solicitors' branch of the profession, have benefited by its clear and objective reporting: nor have its editions shrunk from expressing forthright opinions on matters of current controversy. I trust that the "Solicitors' Journal" may long continue in its great traditions.

KILMUIR, C.

From The Lord Chief Justice
The Rt. Hon. Lord Goddard:

My congratulations and good wishes to the "Solicitors' Journal" on scoring a century.

I have no doubt it will be as useful to the profession in the next hundred years as it has been in the past.

GODDARD, C.J.

From the Master of the Rolls
The Rt. Hon. Lord Evershed:

Since Parliament has decreed that the holders of my office should exercise certain duties in regard to the solicitors' profession, the Master of the Rolls, himself trained as a member of the Bar, is brought into a relationship with the profession of solicitors which brings to him both pride and pleasure. I am particularly grateful for the opportunity now given to me upon the occasion of the centenary of a Journal which has well served the whole profession of the law, but particularly solicitors, to congratulate it, to thank it and to wish it all good fortune for the future. We have in England a relatively small number of legal journals: but the company, if small, is distinguished. The "Solicitors' Journal" has earned a high place in this company for its quality. May it long continue to maintain its tradition!

EVERSHED, M.R.

C-119

GREETINGS

From The Lord Mayor of London
Sir Cullum Welch, O.B.E., M.C.:

I am happy to have this opportunity of sending a word of greeting to the "Solicitors' Journal" on attaining its centenary.

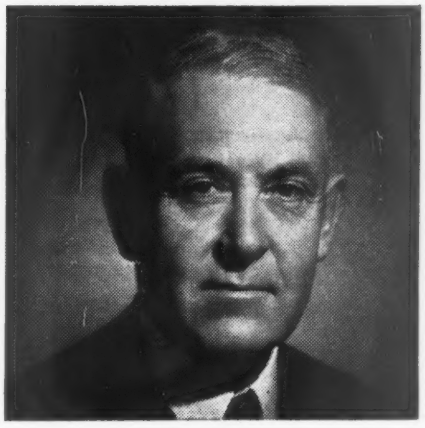
As a practising solicitor for over thirty-six years and one of the six members of our profession who have attained the ancient office of Lord Mayor of London, it gives me great pleasure to wish the Journal every success during the coming century.

G. J. CULLUM WELCH.

From the Chairman of the Bar Council
The Rt. Hon. Sir Hartley Shawcross, Q.C., M.P.:

I am very glad to congratulate the "Solicitors' Journal" on its centenary. During the hundred years of its life, it has performed a most useful service not only to solicitors but to the whole legal profession in canvassing the innumerable legal, political and social problems with which the profession is concerned. Unlike most centenarians, its hundredth birthday finds the Journal going from strength to strength, in its independent and valuable contribution to legal journalism. I am confident that it will continue to prosper on many happy returns of the day.

HARTLEY SHAWCROSS.



From the President of The Law Society
Sir Edwin Herbert, K.B.E.:

I send to the "Solicitors' Journal" my heartiest congratulations upon the attainment of its hundredth birthday. Those hundred years have seen great changes in the law and in the practice of the law, including the Judicature Act, the whole growth of Company Law and the vast extension of Governmental control over the activities of citizens that has come into being since 1914. During all this time the "Solicitors' Journal" has played its part in keeping practical lawyers up to date with regard to all these changes. As the Journal's name implies, it is perhaps the solicitor who is more indebted to it than anyone else. I congratulate the "Solicitors' Journal" on its first hundred years and wish it the best of good fortune for its subsequent life and activities.

E. S. HERBERT

Contents

The Future of Private Practice

Sir EDWIN HERBERT, K.B.E.

President of The Law Society

No thinking person can doubt the value of the private practitioner in any profession. It is important for the citizen that there should be available to him a body of men who are prepared to give him independent unbiased advice. That advice should be given entirely in the interests of the client employing the professional man and there should be no hint or suspicion that a professional man, when acting for his client, owes a loyalty to any other person or body, or has a relationship with any other person or body which could in any way conflict with the interests of the client.

This is particularly so with regard to the practice of the law. The law concerns itself with relationships between people. If one person has a particular interest which requires legal treatment it is because other people in the same matter have interests which require legal treatment. This is so whether the subject-matter in question be conveyancing or litigation or company work or any other form of legal activity.

In many instances corporations or municipal authorities or nationalised industries have such a range and scope of legal problems that they are justified in having solicitors on their staff exclusively concerned with their affairs. It may be of advantage to the business to have on the staff lawyers who are not only specialists in the particular legal problems which are likely to arise, but are also familiar with the nature and conduct of the business.

It is essential, however, that there should be available to the ordinary man, who has neither the means nor the need to employ the exclusive services of a lawyer, expert and unbiased advice in all his affairs. It follows that private practice is not only a necessity, but also is bound to be the backbone of every profession, for the number of persons who are justified in employing the exclusive services of a lawyer is few in relation to the total number requiring legal advice and assistance.

From the point of view of the profession it is also essential that private practice should remain in an active and flourishing condition. It is in private practice that the relationship of solicitor and client is most clearly marked. The solicitor who has a large number of clients is not exclusively dependent upon any one of them. It is much easier for him to take a line which may be unpopular with a particular client than it is for the lawyer who is exclusively engaged upon the work of any one client. It would be more difficult to preserve independence in legal practice were it not for the fact that the bulk of lawyers are engaged in private practice.

Competitive attractions

For these reasons it is important that able men and women of the highest character should be attracted into private practice. It follows from this that private practice must be upon a footing which will attract such people in competition with other forms of activity and in competition with the company or corporation which needs to and can afford to retain the exclusive services of a lawyer.

In the past, private practice has not had any serious difficulty in maintaining its competitive attractions. Apart from the financial aspect of the matter, private practice has inherent satisfactions of its own to offer to the right type of man or woman. It offers independence. It offers a standing in society. It offers the satisfaction of a growing relationship of trust and confidence over the years with a large number of persons in different walks of life. It also offers, perhaps more than any other form of legal practice, work of great variety and interest. There are few private practitioners who can be quite sure at the beginning of the day that there will be no surprises sprung upon them in the course of that day's work.

On the financial side also in the past the situation has been reasonably satisfactory; at all events it has been sufficiently satisfactory to attract the right type of men. It has been possible in private practice to achieve an income which would enable the solicitor to live and to bring up a family in the sort of way that seems best to him; to save a sum sufficient to enable him to provide for retirement; and to accumulate sufficient funds to finance the necessary capital and goodwill commitments of the business. It has been possible in the past to find an adequate supply of men and women whose parents have been able to afford the expensive education that any professional activity imposes on those who wish to enter it.

Effect of modern taxation

Unfortunately it cannot be said without qualification that these conditions exist to-day. With taxation at the rate it is, it has become difficult for a solicitor, if he achieves normal success in his profession, to live, educate and bring up a family in anything like the same way that used to be possible. It has become difficult to acquire sufficient funds to ensure the possibility of retirement at a reasonable age. It has become difficult to accumulate out of income capital to finance either the initial stages or the expanding growth of a solicitor's practice. It has become impossible to do all these things simultaneously. There are fewer and fewer parents who are either able or willing to afford the expense which is inevitable if a man or a woman is to spend several years in education and is unable to earn a living wage for perhaps eight years after leaving school.

Most of these difficulties can only be alleviated by a reduction in taxation, although the provisions of the Finance Act, 1956, with regard to retirement benefits will no doubt prove a substantial relief to many people. In particular the problems of capital formation and the length and expense of the educational period remain to be solved.

As to capital formation, the situation is serious. It is no longer feasible to accumulate capital out of income and the

hope of immediate relief has receded as a result of the rejection by the Royal Commission of a scheme put forward by The Law Society for the exemption from taxation of reserves accumulated for capital purposes so long as they remain in the business and are used as capital for the purpose of the business. It will be necessary for the solicitor's profession to continue the campaign so far as capital formation is concerned.

Professional education

So far as the cost and length of legal education goes, the situation also appears to be serious. It will be generally agreed that the ideal method of entering the solicitor's profession is for the man or woman concerned to remain at school long enough to take the general certificate of education at advanced level. He or she should then preferably spend three years at university and for a man there is two years' national service to be taken into account. For most men five years will have elapsed from school leaving age, say eighteen, before the candidate can begin his period of articled clerkship. So that at twenty-three the entrant to the legal profession will still have three years of hard work without pay in front of him and can hardly expect to be in a position to earn a living at all until he reaches the minimum age of twenty-six.

Contrast this prospect with that offered by the great corporations and companies who are combing the schools and universities for talent. These employers will offer a living wage to a university graduate who has shown ability and will pay it during training. The prospect is alluring to the graduate and still more to his parents.

Solicitors who want to attract the best graduates will surely have to reconcile themselves to paying a living wage during articles. The authorities too will have to ask themselves whether a law degree should not count for more in assessing a person's fitness to practise than it does to-day.

The way ahead

These may be revolutionary thoughts, but it is becoming plainly necessary for the solicitor's profession to direct its thoughts upon these lines.

If the financial obstacles to which reference has been made can be overcome, then it would seem probable that the right type of man will wish to enter private practice. The position of independence, the satisfaction of the solicitor-client relationship, and the variety and interest of the work which private practice affords, should be sufficient to ensure an adequate flow of the right people.

It should, perhaps, be added that the thoughts expressed in this article are those of the writer personally and of no one else.

The Solicitor in Public Employment

B. J. SIMS, LL.B.

Chief Legal Officer, Industrial & Commercial Finance Corporation Limited, and formerly of the office of the Solicitor of Inland Revenue

"ALTHOUGH private practice is the norm, modern life has made the solicitor indispensable in other spheres. Government departments, local authorities, new town development corporations, nationalised industries, commercial concerns are all beset by legal problems. There are so many solicitors engaged in these spheres of activity that they really constitute a new class in the legal profession."[1] This new class is one of the most important developments of the century in the legal profession.

For the purpose of this article on the solicitor in public employment, the expression includes the home civil service, the corporations and bodies established to run nationalised undertakings, and the numerous other public corporations including those of a quasi-public kind. It does not include the local authorities, nor, of course, ordinary commercial concerns.

The Government legal service

The growth of the Government legal service has been phenomenal. It comprises now about 300 qualified lawyers. The senior member is the Treasury Solicitor. It is a paradox of terminology that the present holder of that office is by qualification a barrister. Likewise the present Solicitor of Inland Revenue is a barrister. Their immediate predecessors, however, were members of the solicitor's branch of the profession. It is inherent in the organisation of the Government legal service that this curious position can arise, and it is a mere accident whether the holder of the top post at any time, although designated a solicitor, is actually a barrister or a solicitor. It will be explained later that nomenclature of legal appointments in public service is varied and sometimes confusing and illogical. The Treasury Solicitor's office is the largest in the service and its work the most varied. It is responsible also for the legal work, notably conveyancing, for those Government offices which have no solicitor assigned to them. There is a separate solicitor and office for most of the larger Government departments and offices.

Some Government departments and offices do not have a solicitor as such but a legal adviser (in such cases generally a barrister). In general barristers and solicitors are equally eligible as candidates for appointment in the Government legal service. The titles given to the professional members of the solicitor's offices are a point of interest. Each office normally has several assistant solicitors who are senior members and next in rank to the head of the office. Below them are two grades known as senior legal assistants and legal assistants. It is unfortunate that the terminology of the central and local government legal services differs and, in fact, is somewhat misleading. In the central government legal service the assistant solicitor is a very senior member of the office, and the senior legal assistants and legal assistants are qualified barristers or solicitors. In the local government service the assistant solicitor is generally a younger person,

[1] "The Role of the Solicitor in Modern Society": Professor Richard C. FitzGerald's inaugural lecture as Professor of Law in the University of London (Current Legal Problems, 1954, Volume 7. Stevens & Sons, Ltd.).

and "legal assistant" is the description sometimes used for the unadmitted law clerks. Outside the Government legal service, the nomenclature of legal appointments is even more varied. Frequently, some neutral description is used with the apparent object of providing for the contingency of the holder of the office being either a barrister or a solicitor. "Legal officer" is a popular title. It is unsatisfactory because outside legal practitioners prefer to know whether they are dealing with someone with orthodox legal qualifications and whether that person is a barrister or solicitor.

Since both barristers and solicitors are employed in these offices and do the same work, a remarkable fusion in practice between the two branches of the legal profession has in fact taken place. From the point of view of professional custom there is some anomaly. Whereas any attempt in the local government service for barristers employed in the town clerk's offices to do practical conveyancing work is frowned upon by the Bar Council and The Law Society, little embarrassment is apparently felt about barristers doing similar work in the legal offices of central government.

Recruitment

As regards recruitment to appointments in the Government legal service, it is understood that the majority of candidates and those subsequently appointed are barristers rather than solicitors. It appears to be dictated by the general decline of the Bar as a means of livelihood. In the past, young solicitors were certainly attracted more by the reasonable hope of better prospects in private practice. Being trained in private offices, moreover, they have an inherent dislike of the idea of official employment. However, when the present scales of remuneration and conditions of service are examined it is difficult to understand the lack of solicitor-recruits. In other official and semi-official organisations the legal posts are more commonly filled by solicitors. This lack of balance in recruitment in the civil service leads to some unsatisfactory features because of the lack of practical training of most barristers in the work of a legal office.

Remuneration

As regards remuneration of lawyers in official employment, important changes have taken place in recent years. There has been a considerable upward trend and the result to-day is extremely favourable (if not more than that) for those in official employment compared with private practice. In the Government legal service, the junior appointments command £835–£1,475 per annum, according to age. The salaries for the higher grades are on a scale £1,500–£2,600 per annum. Progress depends on ability primarily and not merely on seniority. In the majority of the departments the salary of the solicitor or other legal adviser is £4,250 per annum.

Organisation and representation

The domestic interests of the legal profession within the civil service are well catered for. In most legal offices the powerful and respected official Whitley system has representatives both on the official and on the staff side drawn from professional and non-professional members. Also there is the Civil Service Legal Society, founded upwards of a quarter of a century ago, which has done much to improve the conditions both financial and otherwise of its members. There is a representative now on the Bar Council for non-practising barristers engaged in public legal service. Outside the Government legal service, lawyers in public employment (other than with local authorities) form a less homogeneous body. They are, however, not entirely without official recognition by and representation on their professional bodies. For safeguarding the remuneration and working conditions of solicitors in appointments, The Law Society has a Salaried Solicitors' Committee charged to deal with all matters relating to the status, conditions of service and remuneration of solicitors in salaried employment.

Public legal employment as a career

In general the public legal appointment bears increasingly favourable comparison with most forms of private practice nowadays. No capital has to be found. Accommodation and clerical staff problems are looked after by the employing body concerned. There is virtual security of tenure, provision against sickness and adequate superannuation benefits and holidays. It is not surprising that many young lawyers are attracted to such appointments rather than take their chances in the hurly-burly and risks of private practice.

An interesting feature in organisations outside the civil service is the tendency to assign certain forms of administrative and secretarial duties to the legal department. It may be taken to be a recognition of the administrative abilities which clearly follow from legal training, more so, of course, in the case of the solicitor in view of his office training as an articled clerk.

It remains to consider whether there are any special qualifications required for the lawyer in public employment. It is believed there are such. It is undeniable that there are vast differences between life in a legal office of a Government department or other official body and life in the office of the solicitor in private practice or the chambers of a barrister. The head of a corporate legal department has a tremendous job. Generally he must possess an all round knowledge of the law in its many aspects, and practice too. He is not only concerned with current law, but he must also keep abreast of proposed changes in the law, peruse new Bills in Parliament and keep a close watch on all forms of delegated legislation which may affect his particular organisation. He is brought into close contact with the other specialists of his organisation. He is one of a team of experts. He must have considerable administrative ability. He is generally at the mercy of an internal telephone system through which administrative officials, whether at head office or branches, ask for "snap" opinions and advice on all sorts of questions. In the same way his office will be in the precincts, generally, of the head office of his organisation and he will be subjected to unannounced visits to his office from officials with the same quest. A considerable measure of versatility and patience is therefore essential to success. A strong personality is needed sometimes to withstand the blandishments or threats of senior administrative officials according to circumstances. All this involves possibly only a judicious mixture of strength and gentleness together with (in the words of a past President of The Law Society) "that rare and abstract quality grotesquely called common sense." Nevertheless he requires it all in abundance. However, there is hardly a dull moment and the variety of the work coupled with continuous contact with people of many kinds both within and without the organisation provides those having the necessary qualifications with a vocation of exceptional interest and employment which, taking all things into account, is not ungainful. Undoubtedly the growth of this type of appointment is one of the outstanding features in the development of the legal profession in the past half century. It seems destined to grow in importance.

"The Solicitors' Journal"
Saturday, January 5, 1957

The Solicitor in Industry

J. W. RIDSDALE

Solicitor, Imperial Chemical Industries, Ltd.

As a solicitor in industry, I hope I may be excused if I take a more favourable view of the usefulness of solicitors in industry than I believe some others do. This usefulness is something rather new to British industry, and because it is new there are many people, including many solicitors, who do not see what a great help it can be. For years, business men got on well enough and went to lawyers, reluctantly, when they had to. The lawyer did his job, was usually paid, and that was that until the next time.

Now, however, things are not merely changing; they have changed. There are several reasons for this, but, strange to say, not one of them is because there are more quarrels that degenerate into litigation: the reverse is the case. As between industrial companies, there seems to be less litigation than in the past and, if someone asks if this is good for solicitors, I would briefly ask: "Has litigation ever made two blades of grass grow where one grew before and thus raised the standard of living?"

No one denies that life is more complex to the business man than ever before. More laws and regulations to be complied with beset him than ever before; more business worries, labour troubles and general harassment than ever before. And so the problem in large measure for the business man is how to cope with all this. What means can he find to pass these problems on to people who are competent to look after them for him, and keep him away from the pitfalls he might otherwise fall into?

The role of the solicitor

It is here that the solicitor who is in industry can really help. He knows, because he has a close knowledge of the business of his employing company, what to look out for and guard against; what are his employing company's interests in contracts and in relations with other enterprises, whether competitors or co-operators; what will be the effect of new legislation and regulations on his employing company's business, and a hundred-and-one other things.

He can, in brief, take into his control a large section of the complexities which would otherwise engage the business man and prevent his giving his time to his job—which is business. And, most particularly, he is there, all the time, to be consulted. There is no need to make an appointment to see him; he is always in the office, and it costs nothing extra to use him. Because he is so readily available the wise company will make it a rule that no important matter in which the solicitor can be of use should go forward without his being consulted—not just as a lawyer but as a man of affairs as well, and by that I mean a man of common sense, not affected by prejudices and disinclined to take hasty decisions. If he is the right man, and not too legalistic, he will find coming to him a range of work not handled by the ordinary lawyer whose help is only wanted when the client is in difficulties.

A company must, of course, be of a reasonable size to justify a solicitor on its staff, either as legal adviser or as secretary, or in a similar position. The main duties of such a person will lie in such fields as commercial contracts and negotiation (in which with his intimate knowledge of his employer's business he can be particularly helpful), company law and practice, property matters, including town planning, and in legislation and projected legislation affecting the business of the company. But the size of a company not merely increases the number of problems; it brings its own problems. With larger companies there will be added the formation and integration of subsidiary and associated companies at home and overseas; the operation of pension and perhaps profit-sharing schemes; schemes for staff housing and other benefits for employees. These and similar matters, when added to the normal legal work of a reasonably sized company, create a volume of work that justifies not just a solicitor but a legal department.

Personal qualities

Is work as an internal solicitor (or "house counsel" as it is sometimes called in the United States) likely to attract a young man, and what is it like to work in a big organisation? What sort of a man is required for the type of work I have tried to describe? To be successful he must, I think, be conscientious, anxious and willing to identify himself with his company's interests and, in other words, "fit in." Nonetheless, he must be sufficiently independent to take his own line when law or conscience tells him to, and he must not lend himself to sharp practice; indeed, the reverse is a *sine qua non* of a successful lawyer in industry, for it is important that to friend and foe alike he must be a man to be relied on.

By working in industry it is important to understand that a solicitor does not give up his independence of mind. He must naturally learn to take orders and live under discipline with others, but these are matters required also in solicitors' firms. He will find that there are advantages denied him in private practice, not least of which is freedom from the constant worry of the overheads of his business, and the reliance he can place on a steady and (I hope) increasing income, with a slice of what are now being called "fringe benefits" that he is not likely to enjoy in private practice.

Taking it all in all, I think there is no doubt that the work can be pleasant and rewarding, and his professional life can be lived without compromise by a solicitor in industry.

The Solicitor in Local Government

R. N. D. HAMILTON

Deputy Clerk, Buckinghamshire County Council

THE association of the legal profession with the local government of this country began well over one hundred years ago. Indeed, its origin lies deep in the history of the sixteenth century and earlier, when local government was the responsibility in counties, first, of the early communal and franchise courts, and then of the justices of the peace and their clerk, the clerk of the peace, and when the town clerk, who kept the borough records, was expected to be, among other things, an accomplished lawyer. In most counties the link with the justices still remains, for the clerk of the county council is usually also the clerk of the peace.

This early association has continued to flourish, and no fewer than 1,375 solicitors in the whole-time employment of local authorities took out practising certificates for the year ended November, 1955; in addition, there are no doubt a small number of solicitors so employed who, by reason of their duties, do not require to take out certificates. A comparatively small number of members of the Bar is also so employed.

To-day solicitors hold most of the clerkships of county councils and town clerkships of county boroughs, the largest authorities in the land, as well as the town clerkships of many non-county boroughs and the clerkships of a substantial number of urban and rural district councils. Thus solicitors serve as clerks or town clerks respectively of the Middlesex, Lancashire and West Riding of Yorkshire County Councils and the cities of Birmingham, Liverpool, Manchester, Leeds and Bristol, to mention only a few of the greater authorities so served, as well as the City of London and the City of Westminster.

Nature of the clerk's office

The solicitors who are the clerks and town clerks of these authorities are their chief administrative officers. In the words of the Report of the Departmental Committee on the Qualifications, Recruitment, Training and Promotion of Local Government Officers issued in 1939, better known as the Hadow Report: "The clerk is the chief administrative officer of the council. The council will look to him for advice on all major questions. He is the channel of their official correspondence, and responsible for the conduct of important negotiations on their behalf. The clerk should co-ordinate the work of the several departments, should keep in touch with the decisions of each of the committees, and should exercise a general supervision over all the work without interfering with heads of departments in strictly technical questions. These seem to us to be the main functions of the clerk. Where he is a solicitor he is ordinarily required to be responsible, in addition, for the legal business of the authority, with competent assistance in the larger offices; but his administrative functions are the more important."

In the financial year 1952–53, local authorities in England and Wales spent on revenue account £915,687,000, and on capital account £474,860,000, for rate fund services such as education, public health, housing, town and country planning, highways, fire brigades, police and civil defence, while many authorities also run trading services.

The responsibility of advising them is, therefore, no light one, and the profession may perhaps be justly proud of its contribution to the public service.

Lawyer or administrator?

The higher a solicitor rises in local government the less he is required to act as a legal adviser and the more as an administrator. Indeed, the ascendancy of solicitors in the top administrative posts has not been without its critics. The Hadow Report itself thought that too much importance should not be attached to the legal qualification, and said that insistence on a legal qualification had the disadvantage that it excluded from the principal positions in local government persons of high administrative ability whose experience had been gained in other work, a disadvantage which to their mind was serious, for high administrative ability was not plentiful. They recommended that, when selecting their clerks, local authorities should direct their attention primarily to the administrative ability and experience of candidates.

Somewhat similar views were voiced more recently in 1953 in a report submitted by officers of the Treasury to the Coventry City Council on organisation and methods. Perhaps this was not unexpected, for in the civil service the senior administrative posts are almost all held by administrators pure and simple, and the professionally qualified civil servants are usually confined to their own technical problems: a complete contrast to the local government service.

These criticisms are perhaps best answered by the unabated strength of the profession in the senior posts since the criticisms first began to be voiced, proof that the present system must give satisfaction. But does the justification for the system not go deeper than this? In the beginning local government was carried on through the early courts, and then by the justices, because it was concerned with the preservation of the peace and of the rights and property of the individual. To-day it is still concerned, and even more so, with individual personal rights and property, for every local government service affects persons or property in greater or lesser degree, and may it not be well then that local authorities, who are so close to the citizen, should have as their principal advisers men who through their professional qualification have an independent duty as officers of the Supreme Court to advise on what is right and who have been brought up to weigh both sides of any question? In the words of Sir Hartley Shawcross, Q.C., delivered to the Local Government Legal Society in 1953: "I think that the legal training is something of very great value in administration; not perhaps in politics but in administration. In politics I am not sure. I am not sure that the training of a

lawyer is a good thing. The main qualification seems to be a passionate belief that there is only one side to a question, but the lawyer sees that there are two sides. That is important in administration—it is vitally important to understand that there are two sides to every question, more so in administration and in litigation, and to try to understand the two sides and be able to make up your minds which is the right side, and I think the legal profession helps to do this and is a qualification for business and administrative life."

Local government service as a career

Below the clerks and the town clerks are their deputies and senior assistant solicitors and assistant solicitors, whose number and duties will vary according to the size and organisation of individual authorities, but for most there will be a satisfying and interesting combination of legal and administrative work.

On the quality of the solicitors attracted to the local government service in the future will depend the high status which the profession at present enjoys there; if this is to be retained, men of high intelligence and broad outlook are required. The financial reward at the top is considerable, while the minimum annual salary payable to a solicitor entering the service as an assistant solicitor is £743 2s. 6d., or, if he has had not less than two years' legal experience since the date of admission, £850 15s., rising to £994 5s. Apart, however, from the financial reward there is the prospect of an interesting career with varied work and substantial responsibility in the service of the public.

Voluntary service

The part which the profession plays in local government lies largely, as will have been seen, in the sphere of administration. It would not, however, be proper to conclude this article without a mention of all those solicitors who have given up their time to serving the public as members of local authorities, and have in many cases attained to the office of chairman or mayor. Their service is this year exemplified in the present Lord Mayor of London, Sir Cullum Welch, O.B.E., M.C. If it were not for the voluntary work given by members of local authorities to the public, local government as it is known to-day would not exist.

Commercial Law in Action

CLIVE M. SCHMITTHOFF

A SOLICITOR who wishes to practise in commercial matters will soon realise that he is expected to be much more than a lawyer. He has to know a good deal about accountancy, company administration, taxation, shipping, exporting, international banking and insurance practice, the general standard of justice in other countries, economic, financial and political trends in many parts of the world and, above all, commercial mentality. He will soon realise that in this age of the jet plane, telex and nuclear power the world has become a small place which, alas, is inhabited by people differing widely in their ideas of commercial morality and justice, and that commercial law is again assuming an international character. The sooner he forgets to consider himself a lawyer pure and simple and begins to look upon himself as a man of affairs who happens to be learned in the law, the earlier will he be able to give his clients the practical and useful advice which they expect. When he has ceased to think of a problem of commercial law as a neat legal point in the test tube, when he sees it as a commercial proposition with many facets, one of which—the legal one—happens to interest him more than the others, he will have graduated from apprentice to practitioner in commercial law.

The extra-legal context

Of the various features characteristic of commercial law, I rank first its close contact with extra-legal practice. That there should be such connection is not a new experience. It is already reflected in Malynes' *lex mercatoria* and Lord Mansfield's judgments, but what was extra-legal in the days of Malynes, Lord Mansfield and even Lord Sumner is now an integral and often elementary part of commercial law. While the custom of the merchants has long ceased to be a law-creating force, the extra-legal environment of commercial law continues to change. In our days, extra-legal practice has extended into entirely new fields and thus is changing the whole complexion of commercial law.

That change should not be confused with the natural growth of our subject which can best be ascertained by comparing the present law with that of a century ago. In 1857 only a short time had passed since Mr. Bramwell had invented the word "Limited," with stupendous consequences for the economy of the country and for commercial law. Mr. Blackburn had already published his "Contract of Sale" (1845), but Benjamin was still in practice at New Orleans. The great commercial codes, beginning with Chalmers' Bills of Exchange Act, 1882, were still to come. Mathew's Commercial Court, which was constituted after the Judicature Acts in 1895, was far away. A century ago commercial law was in a state of impatient expectation. After its great advance in the seventeenth and eighteenth centuries and a period of consolidation in the first half of the nineteenth century, it made ready to continue its progress. That, however, is only what one would expect of a living law. In retrospect one may marvel at the succession of Companies Acts from 1862 to 1948 or admire the strength of the common law which developed the modern rules on frustration, waiver, exemption clauses, f.o.b. and c.i.f. contracts, and bankers' commercial credits, but when attempting to appraise the present position and future direction of commercial law these strands of natural growth have to be left out of account.

The tendency of modern commercial law to overflow into related topics of extra-legal nature may be illustrated by a

few examples. The Companies Act, 1948, embodies provisions which require the lawyer to understand at least the rudiments of the mystery of accountancy. He may decide to steer clear of the Eighth Schedule, which deals mainly with the contents of the balance sheet and profit and loss account, but he cannot escape from the study of the share premium account and the capital redemption reserve fund. Apart therefrom, the articles may require a consideration of accountancy principles, as in *Dean* v. *Prince* [1954] Ch. 409, where the articles of a private company provided that in the event of death of any member his shares should be purchased by the directors at a price certified by the auditor to be their fair value, and the court had to consider whether the valuation had to be made on the basis of the break-up value or on the going-concern basis. The Restrictive Trade Practices Act, 1956, makes it necessary for the lawyer to understand the working of economics and to keep a watchful eye on its ever-changing pattern. When determining whether a registered agreement is contrary to the public interest, the Restrictive Practices Court will apply judicial notions to economic concepts and that process will have legal consequences: the court will determine whether the agreement in issue is void or valid. The Act of 1956 wisely refrains from giving a general definition of public interest, but an earlier Act, the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, provides expressly that when determining the public interest the Monopolies Commission shall have regard to the general economic position of the United Kingdom. A further illustration of the expansion of commercial law into *terra nova* is afforded by *Gourley's* case [1956] A.C. 185 and its prolific progeny, which require the lawyer to pay careful attention to the tax element in every claim for damages or compensation. He would be out of touch with reality if he did not know the principles of taxation and could not apply them to the case in hand. The undogmatic approach of commercial law to new problems is perhaps most clearly evident in the admission of the three-cornered contract in appropriate cases: in *Pyrene Co., Ltd.* v. *Scindia Navigation Co., Ltd.* [1954] 2 Q.B. 402 it was held that a third party, the seller in an f.o.b. contract, could "participate" in the contract of carriage to which he was not a party but which was made by the buyer and the carrier, and in *Brown* v. *Sheen and Richmond Car Sales, Ltd.* [1950] 1 All E.R. 1102 and *Andrews* v. *Hopkinson* [1956] 3 W.L.R. 732 the triangular character of a hire-purchase transaction involving a finance company was recognised, and it was held that a dealer negotiating with a customer for the hire-purchase of a car was liable on an "independent" warranty of fitness of the car although the contract of hire-purchase was made between the finance company and the customer.

Harmony with commercial concepts

The second characteristic of commercial law is that those administering it, judges and practitioners, deliberately attempt to harmonise it with the way of thinking of commercial men and to arrive at solutions likely to be regarded by the commercial world as sound and reasonable. That attitude is remarkable for more than one reason. First, it is not adopted in other branches of law. When dealing with landlords, motorists and burglars, the courts do not usually ascertain whether those classes of the population are likely to approve the legal rules enunciated by them. Secondly, commercial mentality is notoriously different from that of the lawyer; it often is of appalling informality and vagueness. Commercial men always wish to write it short, and lawyers always wish to write it long, Lord Blackburn used to say. Thirdly, strictly speaking, commercial law does not exist. In England it is not the law of a particular class of persons, such as the merchants and traders, but it is part of the general law of the country and anybody engaged in a commercial transaction is governed by it. Nevertheless, modern judges, when dealing with commercial cases, never lose sight of the ideal that the rules which they lay down should be in harmony with best commercial opinion. Numerous examples illustrate this tendency. In *Scottish Insurance Corporation, Ltd.* v. *Wilsons and Clyde Coal Co., Ltd.* [1949] A.C. 462, 487, a case dealing with participating rights of preference shares in the winding up of a company, Lord Simonds said: "Reading these articles as a whole with such familiarity with the topic as the years have brought, I would not hesitate to say . . . that the last thing a preference stockholder would expect to get (I do not speak here of the legal rights) would be a share of surplus assets, and that such a share would be a windfall beyond his reasonable expectations." In *M. W. Hardy & Co. Inc.* v. *A. V. Pound & Co., Ltd.* [1955] 1 Q.B. 499, 511, a case dealing with the requirement of export licences in f.a.s. and f.o.b. contracts, Singleton, L.J., in a judgment affirmed by the House of Lords ([1956] 2 W.L.R. 683), observed: "From the business point of view it appears to me that it was more convenient, to say the least, that the sellers should deal with any question as to export licence from Portugal through their suppliers—and that seems to have been the intention." The clearest expression of this tendency is found in a recent judgment of Devlin, J. (*St. John Shipping Corporation* v. *Joseph Rank, Ltd.* [1956] 3 W.L.R. 870, 882): "Commercial men who have unwittingly offended against one of a multiplicity of regulations may nevertheless feel that they have not thereby forfeited all right to justice and may go elsewhere for it if courts of law will not give it to them. . . . To any judge who sits in what is called the Commercial Court, it must be a matter of special concern. This court was instituted more than half a century ago, so that it might solve the disputes of commercial men in a way which they understood and appreciated, and it is a particular misfortune for it if it has to deny that service to any except those who are clearly undeserving of it."

The future

In one respect commercial law to-day is lagging behind time, namely in matters of law reform. The Law Reform (Frustrated Contracts) Act, 1943, the Law Reform (Enforcement of Contracts) Act, 1954, the intended introduction of no par value shares, the proposed abolition of endorsements on certain cheques concern limited, though important, topics. The immediate task is to take in hand larger projects, such as the reform of arbitration proceedings, aiming at a closer co-operation between commercial arbitration tribunals and the Commercial Court than exists at present and the introduction of a less formal procedure for the decision of questions of law than the cumbersome method of case stated; the draft of an Export Sales Bill; and the preparation of a Companies Code which abolishes obsolete provisions and simplifies company law.

In the middle of the twentieth century commercial law presents itself as a body of law vigorous in growth, modern in spirit, aware of its need for reform. A hundred years ago commercial law prepared to move into the unknown world of limited companies and commercial codes. To-day it is ready for another advance, into the world of international business organisations, of the atom and space and all the unknown things, pleasant and unpleasant, which the future might hold in store for us.

"The Solicitors' Journal"
Saturday, January 5, 1957

Trends in Conveyancing

J. GILCHRIST SMITH, LL.D.

Editor of "Emmet on Title"

It is not possible to assess the present trends in conveyancing without referring briefly to the recent history of the law of real property and of the system of conveyancing. Few solicitors now in active practice had wide experience before 1926. Moreover, an almost universal tendency to forget the troubles of the past may combine with an annoyance about current problems so that judgment of the value of the changes made by the 1925 property legislation may be warped. Nevertheless, it can safely be asserted that the main objects of that legislation, namely the simplification of the law of real property and of the practice of conveyancing, have been achieved. Some of the former complications are now almost forgotten, for instance, the co-existence of the various common-law forms of tenure which was finally dealt with by the enfranchisement of copyholds and the extinguishment of manorial incidents. Other changes now accepted as inevitable marks of progress include the assimilation of the law of real and personal property such as occurred in the rules for distribution of estates on intestacy. Of more direct relevance, perhaps, was the attempted simplification of the practice of conveyancing by the reduction in the number of legal estates so that such estates could become the basis of conveyancing. Although this led to some rather artificial steps, for example, the obtaining of special grants and the execution of vesting documents affecting settled land, on the whole the results seem to have been advantageous. Similarly, the registration of land charges has, on balance, represented an improvement over the former rules.

Impact of statutory complications

For these reasons it is fair to conclude that the 1925 property legislation was successful. After the few years necessary to give effect to the transitional provisions the task of the conveyancer would undoubtedly have been eased. On the other hand, new problems have arisen in recent years. Almost all of these have been caused by the provisions of statutes affecting the rights of those entitled to interests in land. The best example is the Town and Country Planning Act, 1947. Fortunately the revolutionary view that use had become a matter of title is now never advanced, but the Act has made necessary careful inquiries before purchases, mortgages and other similar transactions. Although it is not often necessary to consult the Agricultural Holdings Act, 1948, when preparing a lease, that is because precedents now take adequate account of its provisions. Similarly, the Landlord and Tenant Act, 1954, has an important effect on conveyancing transactions affecting leaseholds.

The general result of recent statutes had been to increase the emphasis on inquiries before contract and the preparation of a contract for sale at the expense of those stages in a transaction of purchase which are traditionally of greater concern, such as investigation of title and drafting of the conveyance. This is perhaps the most important trend that can be discerned at the present time. Although standard conditions of sale have been devised with a view to reducing the searches and inquiries required before contract, it seems unlikely that they will succeed in reversing the trend. One of the recent recommendations of the Roxburgh Committee on Land Charges was that the Law of Property Act, 1925, s. 198, should be amended so as to ensure that registration should not, as between vendor and purchaser, be deemed to give the purchaser knowledge at the date of the contract of any matters of which he was in fact ignorant. If this change were made it would avoid the unfortunate results of the decision in *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379, and so the necessity for land charge searches, and possibly local land charge searches, before contract would cease. It seems reasonable to conclude, therefore, that there may, in the near future, be some reduction in searches and inquiries required before contract, but it seems doubtful whether there will be any change in the present emphasis on the stages at which a purchaser's interests are protected. Usually his solicitor must assist in protecting them by inquiries before contract, and more than ever the drafting of the contract is important in determining the purchaser's rights. Although investigation of title is still a skilled task, the tendency is to regard the substantial rights of the parties as being determined by the contract, and subsequent investigation and completion of the conveyance are often looked on as being in the nature of formalities which will usually take place in due course of routine.

Extension of compulsory registration

The extension of the system of registration of title provides the other main trend in conveyancing practice. Although voluntary registration occurs fairly frequently, the number of registered titles is largely determined by the extent of the compulsory areas. The turning point in recent years appears to have been the report of Mr. Neville Gray, K.C., following the public inquiry into the proposal that the County of Surrey should become a compulsory area. In reporting that compulsory registration should be introduced in the county, Mr. Gray summed up by affirming that the registered title is simpler and the registered transfer is cheaper than an unregistered conveyance. He was also impressed by the value of a State guarantee and by the fact that a purchaser is more readily able to understand a registered title.

Since that date there has been no similar inquiry. The orders in respect of the County of Kent and the County

Boroughs of Leicester and Oldham were apparently made without opposition. It seems reasonable to conclude that the extension of the compulsory areas will proceed steadily and may become much more rapid if staffing difficulties at the registry are alleviated. A point of some interest is that the statutory power to set up district registries has not yet been used, although recent administrative arrangements for carrying out at Tunbridge Wells of some work may be a step in that direction.

Changed attitude

An interesting example of the changed outlook with regard to registration of title appears in the recent report of the Roxburgh Committee. The first question put to that committee related to the difficulties which may now arise because the land charges register has been in existence for more than thirty years, and so a purchaser of land under an open contract may not know the names of persons against whom searches may have to be made. The committee stated: "We do not suppose that the framers of the 1925 Acts were blind to this shortcoming in their system. We assume that they regarded the registration of charges against unregistered land itself as unnecessary in the belief that the title to all land would be registered within the next thirty years. Now we are at the end of that period, and it is open to doubt whether registration of all titles will be completed even within the next thirty years." Whether the framers of the 1925 Acts appreciated this shortcoming would seem to be very doubtful indeed. However that may be, the assumption of the committee that these framers believed that the title to all land would be registered within thirty years does not appear to be justified. During the passage of the various Bills through Parliament there were not many references to the extension of areas of compulsory registration. Not only is it impossible to find any ground for the assumption that title to all land was intended to be registered within thirty years, but much doubt was expressed whether registration of title would prove preferable to a system of conveyancing based on unregistered titles after the proposed reforms had been carried out. For instance the summary of the Lord Chancellor's speech on the report of amendments to the Law of Property Bill contained in *The Times* of 25th May, 1921, contains the following words: "Dealing with the main questions which emerged he said the first related to the method whereby it would be possible, *should a public demand exist for it, and should circumstances justify it*, that there should be further extension of the system of transfer by registration of title in place of the system of transfer by conveyance without registration. . . . Extension was to be gradual, but would only come into effect in pursuance of an order made *ad hoc* in reference to that area and after inquiry and with the assent given by Parliament."

Reasons why solicitors have in the past opposed an extension of the system of registration of title differ greatly. Perhaps one practical consideration that reduces any tendency to such opposition is the present difficulty of obtaining clerical staff to carry out such duties as abstracting and drafting and copying of lengthy documents required in dealing with unregistered titles. A fair conclusion would seem to be that the reforms of 1925 have succeeded in making unregistered conveyancing less troublesome, and, as a result, in keeping down costs. On the other hand more solicitors seem favourably disposed towards the system of registration of title, and material extensions of that system can be expected in the not distant future.

The future

The effect of recent statutes on the interests of land owners is the same whether or not the title is registered. Consequently it seems reasonable to conclude that in the future conveyancing practice will consist more in the use of knowledge and experience to protect the interests of a purchaser, lessee or mortgagee than in the mere investigation of the title or approval of a draft lease. It is not likely that during the next few years we will see as many statutes affecting interests in land as have been passed in the last decade, and to some extent there may be a reduction in the effect of statutory restrictions, for instance by the decontrol of many houses. On the other hand, the long-term tendency of social legislation to achieve its objects by restricting contractual rights is not likely to be reversed to any material extent. Customary work in deduction and investigation of title must, therefore, become comparatively of less importance, particularly as registration of title continues. It has long been clear, even to laymen, that sales, leases and mortgages of registered land could not be carried out without legal advice as was at one time hoped by a substantial number of land owners. The activities of local and other public authorities and the increased danger of loss as a result of statutory restrictions have combined to remove any possible doubt on this subject.

Similar conclusions can be reached from an examination of the work done by solicitors in the preparation of settlements and wills. Few settlements of land are prepared and probably most of these are by way of trust for sale; any strict settlements are likely to be in a simple form. Both in the preparation of these documents and in the drafting of wills the tendency is to pay more and more attention to the probable results of taxation and estate duty. Thus, once again, we find the emphasis on the duty of the solicitor to advise on the consequences of statutes and to determine the rights of the parties accordingly.

The increased activities of local and other public authorities must not pass unnoticed. Compulsory acquisition occurs far more frequently than before the last war, and few solicitors can avoid becoming concerned with the complex rules involved. Another example is provided by the making of improvement grants. These grants assist many owners of small houses to carry out desirable improvements, but the restrictions imposed on sale of the house may cause awkward conveyancing problems.

Summing up

These considerations lead us to sum up our views on the future of conveyancing practice in a few simple sentences. Transactions affecting land the title to which is not registered will continue without substantial change. Compulsory registration of title, however, will be steadily extended. On the purchase of land, and in preparation of documents such as leases, mortgages, settlements and wills, solicitors will be obliged to pay most serious attention to the provisions of numerous statutes, mainly those limiting the rights of landowners and their contractual powers and, most important, the revenue statutes. The emphasis is passing from determination by conveyancing documents of the rights of the parties between themselves to the ascertainment of the rights and obligations of clients and the assessment of the probability of the action which will be in their best interests in the future. Finally, although other factors may tend to hide their effect, it would not be wise to overlook the importance of the increasing activities of local authorities.

"The Solicitors' Journal"
Saturday, January 5, 1957

Divorce Law—The Last Fifty Years

E. R. DEW

Principal and Director of Legal Studies, The Law Society's School of Law

It is proposed in this article shortly to review the main developments in the law of divorce during the last fifty years. Clearly the possible field is so wide that it is only possible to consider some selected topics and even those in general outline only.

Increase of grounds for divorce

The most striking development is undoubtedly the increase in the grounds for divorce. In the year 1900 there was only one ground for divorce so far as the husband was concerned and that was adultery. Where the wife was petitioner it was necessary for her until the Matrimonial Causes Act, 1923,[1] in order to obtain a decree to prove not only adultery but cruelty or desertion as well.

The Matrimonial Causes Act, 1937, added, as grounds for divorce, desertion, cruelty and insanity. It also introduced the new decree of presumption of death and dissolution of the marriage. All of these new grounds were made available for either party. But are the existing grounds sufficient ?

The main point discussed in the Report of the Royal Commission[2] was whether divorce by consent should be allowed and, if so, subject to what conditions. The present law is based on what is called " the doctrine of the matrimonial offence." Certain acts (called " matrimonial offences ") are regarded as being fundamentally incompatible with the undertakings entered into at marriage and commission of any of these acts by one party gives the other an option to have the marriage terminated by divorce. The suggestion has been widely made that the whole basis of the law should be changed so that divorce should be granted where a marriage has irretrievably broken down.

Of the nineteen members of the Commission, eighteen were for maintaining the doctrine of the matrimonial offence and one against. Of the eighteen, nine were against any introduction of the principle that divorce should be granted where the marriage has irretrievably broken down, so were against any question of divorce by consent or at the option of either party after a period of separation. The remaining nine, while favouring the retention of the doctrine of the matrimonial offence, considered that there should be provision for divorce where the marriage has completely broken down, so were in favour of divorce where the parties have lived apart for at least seven years immediately preceding the application, provided the other spouse made no objection. Four of the nine went further, and, while supporting the last-mentioned proposal, preferred that after seven years' separation either spouse should be able to obtain divorce, notwithstanding the other's objection, if he or she could satisfy the court that the separation was in part due to the unreasonable conduct of the other.

The disagreement between the members of the Commission appears equally to be shared by the public at large. It seems that no legislation can at present be expected to implement the recommendations of the Report, but some of the procedural alterations suggested may be made by rule.

Numbers of divorces

With the widening of the grounds for divorce by the 1923 and 1937 Acts and lately with the introduction of Legal Aid, it is only to be expected that there would be a great increase in the number of petitions filed each year. Appendix II of the Report contains complete and interesting statistics. It is sufficient for me to say that there were 244 divorce petitions filed in 1858, 609 in 1900, 2,973 in 1925 (the then record of 5,085 in 1919 providing an apt commentary on " war-time " marriages), 6,915 in 1940 and 28,347 in 1954 (the all-time record being 37,637 in 1951).

Table 5 of Appendix II sets out the approximate percentage of divorces per 1,000 total population for England, Scotland and certain other countries. The rate in England for 1953 was 0·67 per 1,000 total population, a rate exceeded by six of the ten other countries for which figures were given for that year.

I say no more about statistics as those interested will find every possible table in Appendix II of the Report.

The part played by the courts

I next want to consider the part played by the courts. Has the tendency been towards easier divorce ? The point here is that the grounds for divorce are laid down by statute and the court has to administer statute law and to construe it. That construction can be either narrow or wide. There will clearly be far more divorces if the construction is wide. Take, for instance, cruelty. The court, if it had been so minded, could under the guise of cruelty give a divorce on practically any evidence of unhappiness.[3] But the court has not done this, and by insisting on a narrow construction of statute law has greatly reduced the possible number of divorces.

As to adultery, all that need be said is that the court insists on a charge being proved " beyond reasonable doubt " (*Preston-Jones* v. *Preston-Jones* [1951] A.C. 391). At first sight this appears to be the same high standard of proof as is required to prove a charge in a criminal court, in fact, in *Ginesi* v. *Ginesi* [1948] P. 179, the Court of Appeal expressly so decided. But for various reasons, this case may be open to

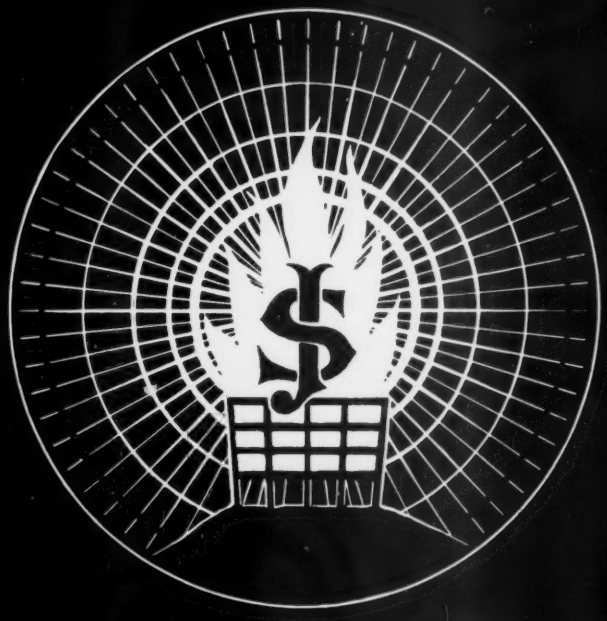
[1] The 1923 Act also preserved the wife's right to a decree where the husband was guilty of rape, sodomy or bestiality.

[2] The Report of the Royal Commission on Marriage and Divorce was published in March, 1956, by H.M. Stationery Office, price 11s. 6d.

[3] Compare the words of Denning, L.J., in *Kaslefsky* v. *Kaslefsky* [1951] P. 38: " If the door of cruelty were to be opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament."

[*continued on p. 35*

The Solicitors' Journal



1857 1957

Loyal Greetings

ESTABLISHED 1857

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On the occasion of the centenary of the foundation of "THE SOLICITORS' JOURNAL" the Editor and the Directors of The Solicitors' Law Stationery Society, Limited, the proprietors, respectfully beg to send

LOYAL GREETINGS

to Her Majesty the Queen and to assure Her Majesty that the Journal will continue in its endeavour to serve solicitors and all others who are engaged in the administration of justice and to uphold the highest ideals and traditions of English law.

Editor,
The Solicitors' Journal.

Chairman,
The Solicitors' Law Stationery Society, Ltd.

BUCKINGHAM PALACE

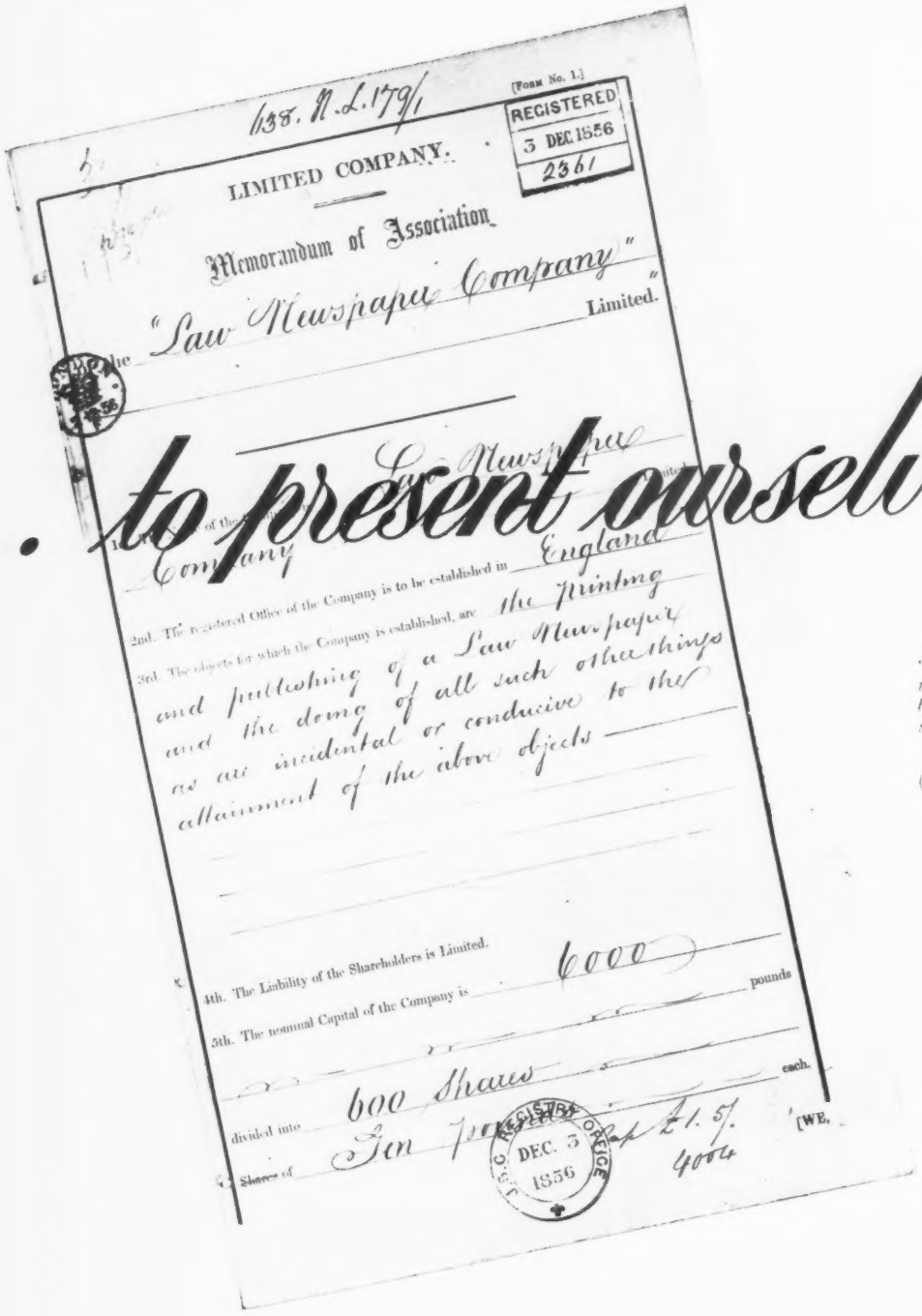
The Editor, The Solicitors' Journal

I am commanded by the Queen to convey to you and to the Directors of The Solicitors' Law Stationery Society, Limited, Her Majesty's sincere thanks for the message of loyal greetings sent to her.

On the occasion of the centenary of "The Solicitors' Journal" Her Majesty sends her congratulations to all concerned with the production of the journal and her best wishes to its readers.

Private Secretary.

5th January, 1957.



. . . to present ourselves

"The day has come for us to present ourselves before the world and we shall be judged henceforward by our deeds."

(SOLICITORS' JOURNAL, *3rd January*, 1857)

The law is the garment of life. The law reports are the mirror of the life of the nation; they reflect its every movement. The legal Press which serves the law reflects that life, too, and when its service is at its best it is at its most unobtrusive. So the story of a legal journal is for the most part the story of those whom it serves.

The Beginnings

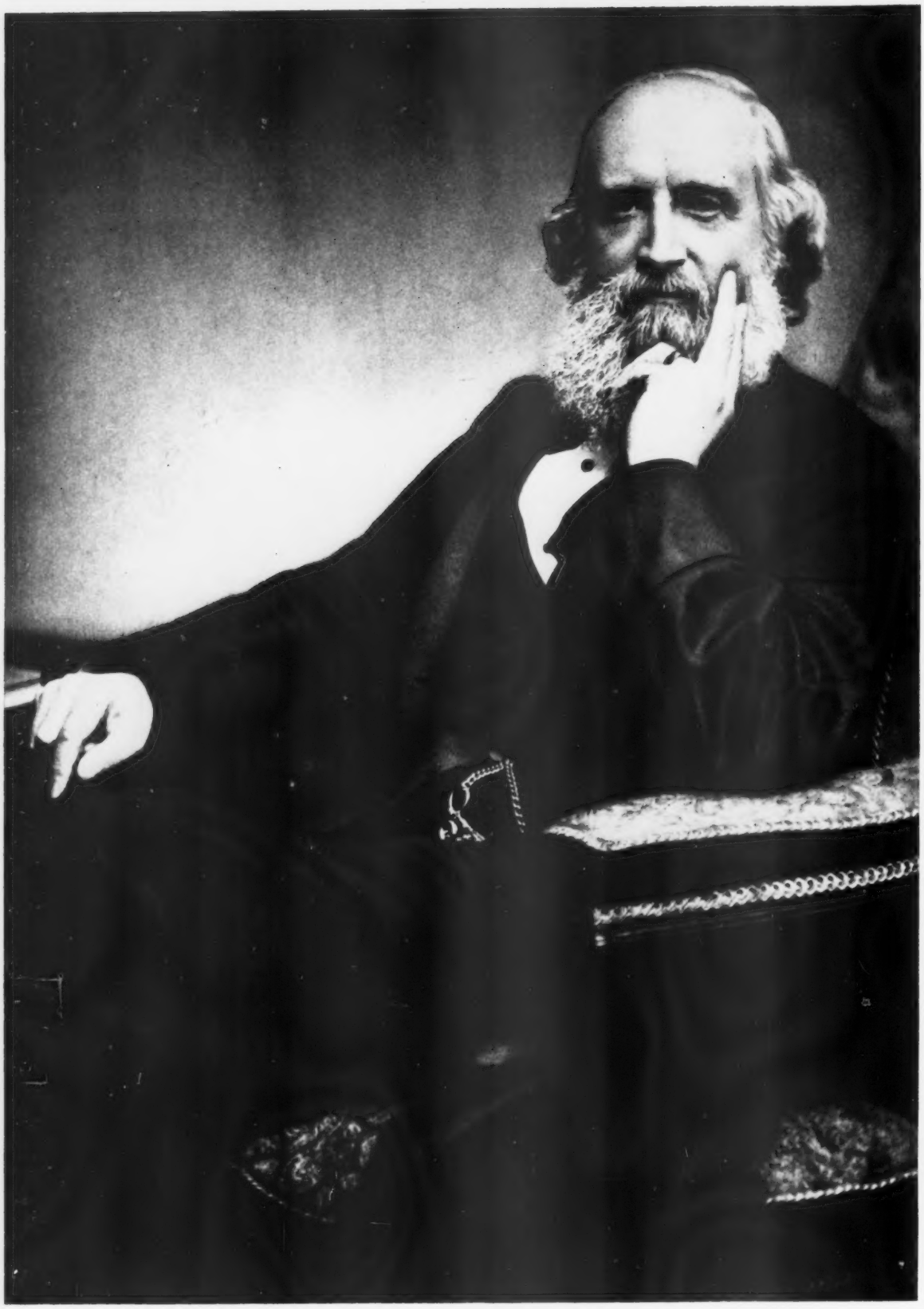
The birth of the *Solicitors' Journal* just a hundred years ago coincided with the awakened corporate consciousness which was bringing to solicitors alike a sense of unity and common purpose and a new pride in their essential functions in the administration of justice. Those functions their predecessors had, of course, exercised for centuries, solicitors in Chancery proceedings and attorneys-at-law in other matters. In the beginning the Serjeants' Inns, the Inns of Court and the Inns of Chancery had embraced in a comprehensive hierarchical system all who practised in any capacity before the Superior Courts at Westminster. But the Civil War in the seventeenth century had disrupted this system and the eighteenth century had seen its consequent decay. Even in the Inns of Court formal legal education for the Bar had ceased, while the Inns of Chancery had fallen away so completely that they no longer provided even a professional background for solicitors and attorneys.

The nineteenth century brought reawakening, reassessment and reorganisation on a fresh basis. In 1827, The Law Society was founded, chiefly through the energy of its first secretary, Robert Maugham (the grandfather of Viscount Maugham). Three years later he founded the *Legal Observer* and throughout its existence he was both proprietor and editor.

It was the seed time of legal journalism. Besides the *Legal Observer* there was the *Jurist*, and then in 1843 Edward Cox, an energetic and somewhat brash young man of thirty-four, a month short of his rather late call to the Bar, founded the *Law Times*, appealing on a wide basis to the whole of the legal profession.

But meanwhile something was stirring and growing among the solicitors and attorneys, a sense of their increasing importance in a world of expanding industry and commerce, a strengthening unity among themselves. Already the distinction between the two designations was virtually obsolete; the name "solicitor" was coming into general use and, throughout the country, those who bore it were forming themselves into influential groups. Among the most notable of these was the Metropolitan and Provincial Law Association, which in its inception owed much to a young man now just on the threshold of his profession, William Shaen, who in 1848, at the age of twenty-eight, became its secretary.

Shaen was a most remarkable man, a particularly fine example of the serious, energetic, constructive, hopeful Victorian middle-class which was then laying the foundations of a new England. A Nonconformist in family background and tradition, he was educated at London University, from which he emerged a classical scholar and a man of wide culture. He was a practical man, distinguished in his profession, founding, at No. 8 Bedford Row, in the mellow spaciousness of the finest eighteenth-century street in the legal quarter, a firm which still flourishes there bearing his name. Like many of his generation he was very much the benevolent autocrat in his firm and in his family, but his own special force of character he drew from his deep-rooted moral principles and sense of duty, his strong social consciousness, his courageous championship of right and liberty and his intense compassion for the oppressed. He was the vigilant enemy of vice and drunkenness and



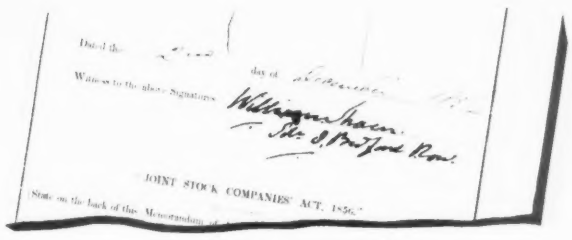
William Shaen (1821–1887)

Shaen's drawing-room at 8 Bedford Row (from a watercolour of the 1850's)

The same room to-day, still used by the senior partner of Shaen's firm

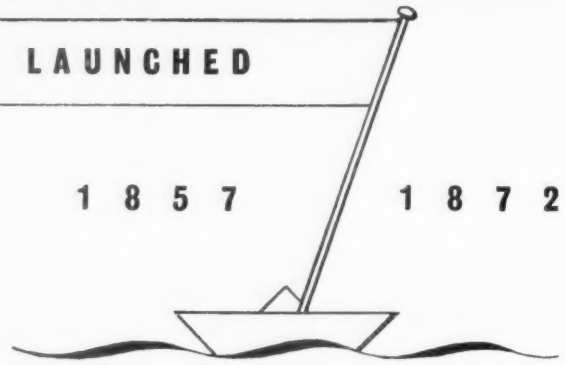
exploitation of the poor. To the underpaid seamstresses of London, to the blind, to the Italian patriots struggling to free their country from foreign domination, he was equally a constant friend. He did much to promote the higher education of women and looked forward to their political enfranchisement. He represented the best and most clear-headed type of reformer. In his picture one sees him easy and relaxed in attitude, distinguished in bearing, his strong bearded face confident and kindly, the face of a man integrated and well-balanced. His character, of course, determined his attitude to his branch of the legal profession. "No limb," he said, "can possess a life exclusively of its own, but must be subservient to the good estate of the body to which it belongs."

It was in this spirit that he approached the founding of the *Solicitors' Journal* in 1857. For eight years or more the conviction had been growing that "attorneys and solicitors will not be satisfactorily represented until they possess the power by means of a periodical publication under their own control . . . of . . . advocating their views on legal questions." The idea was constantly reiterated at the meetings of the Metropolitan and Provincial Law Association, particularly at the meeting at Birmingham in October, 1854. So in 1856 it was felt that the time had come. The Joint Stock Companies Act of that year had just inaugurated the era of the limited liability company and it provided a convenient medium for the execution of the project. The Law Newspaper Company, Ltd., was formed (the first company to issue a periodical). Shaen was its secretary and his firm acted throughout the company's existence as its solicitors. Among the first directors were men whose firms have continued to our own time: Thomas Holme Bower, founder of Bower, Cotton & Bower; John Moxon Clabon, co-founder of Fearon & Co.; Edwin Field, founder of Field, Roscoe & Co.; Frederick Janson, founder of Janson, Cobb, Pearson & Co.; Ambrose Lace of Liverpool, founder of Laces & Co.; Mathew Dobson Lowndes, also of Liverpool, founder of Lowndes, Lloyd, Hilton & Wardle; Arthur Ryland, of Birmingham, founder of Ryland, Martineau & Co. The object of the company was declared to be to publish a new weekly journal to be called the *Solicitors' Journal and Reporter* which was to be especially devoted to the interests of solicitors. Only solicitors might be shareholders. The Journal, appearing every Saturday in time for the early morning trains, was to be available to subscribers at £2 12s. a year. It was to contain a summary of the legal news of the week, to devote some space to social and economic questions, to review new books and to notice the proceedings of the principal scientific and literary societies. Theology and party politics were to be carefully avoided. An arrangement had been reached with the proprietors of the *Weekly Reporter*, already established in 1852, whereby its current number was to form part of the weekly issue of the Journal, though at the same time it continued its own independent sale. (In 1859 the two passed under one ownership.) More important still, the *Legal Observer* was merged in the *Solicitors' Journal* and ceased separate publication.



The subscribers to the memorandum: some names still well known to-day are discernible

THE SHIP IS LAUNCHED



So on 3rd January, 1857, the first number of the *Solicitors' Journal* was published at No. 13 Carey Street, on a site now covered by the Law Courts at about the point of the main northern entrance. In November the Journal moved to No. 59 just east of the Lincoln's Inn gateway. Some years later it moved to No. 15 Cook's Court, Carey Street, running east and west across the site now occupied by New Court.

At its foundation the Law Courts were not dreamt of. The common law courts sat, for the most part, at Westminster and the Chancery Courts in Lincoln's Inn, save that of the Master of the Rolls who occupied the Rolls House in Chancery Lane. From Carey Street southwards a tangle of ancient alleys and lanes sloped down to St. Clement Danes and old Temple Bar. Such a maze it was, that little boys used to earn pennies guiding strangers from the Strand to Lincoln's Inn. Carey Street itself, with its attractive if somewhat neglected houses, was in the very heart of the legal London of Charles Dickens and "Bleak House."

The year 1857 opened with storms of extraordinary violence, and one may picture the editorial staff of the *Solicitors' Journal* coming and going through sodden streets with uneven pavements and roadways thick with liquid mud and horse-dung, amid jets of water streaming from the irregular gabled roofs with, maybe, an occasional tile or chimney-pot crashing earthwards. But none of these discomforts is reflected in the calm, well-balanced declaration of policy of the first editorial, which bears the mark of Shaen's mind. The paper was to reflect the opinions of solicitors, watch over their interests and urge on the Legislature and the nation their just and reasonable demands. It challenged no comparison and sought no rivalry with any other journal. It would equally regard and maintain the interests of both town and country practitioners. "The social estimation of solicitors must depend upon their efforts after self-improvement and upon the growth in the public mind of a conviction that the body of the profession is as upright and public-spirited as the individual members of it are known to be by those who have the means of judging of them . . . The duty of this journal is not only to convince solicitors that their demands are just but to convince the world at large and this we can only hope to do by establishing a reputation for full and fair enquiry, for fair and unbiased judgment."

A corner of old Carey Street a few yards from the Journal's first office

The policy so stated was vigorously pursued in the early years. The Journal's editorial pages set a standard in fearless comment on the legal issues of the day. They suggest a man cast in the mould of Shaen himself and like him a solicitor. And that makes it more odd that, although nothing is now known of the editorship during the first fifteen years of the Journal's existence, there is some reason to suppose that the first editor was in fact a barrister. So at least the *Law Times* claimed with emphatic sarcasm in its last issue of 1856. However that may be, it is certain that the editor gave full satisfaction to the promoters, and when in 1861 the Law Newspaper Company sold the undertaking it was expressly stated on 13th March, 1862, that "no change whatever has been made in the editorial management of this journal or can be made without the express approval of a body of gentlemen comprising several of those leading solicitors who originally founded it and are still its active and cordial supporters."

In its presentation the Journal sought to avoid "masses of undigested verbiage" and to "supply to busy men in the shortest compass the practical assistance they require." Its basic form was simple and practical—a couple of leading articles on current legal topics, a short legal news summary, brief notes of recent decisions, reports of the transactions of professional societies like the Law Amendment Society and the Juridical Society, a summary of Parliamentary proceedings, a selection of book reviews, a list of births and deaths, the full text of any new rules of court, a list of English and foreign funds and railway stocks, a list of bankruptcies, dissolutions of partnership and companies wound up. In addition there was often news of the proceedings in overseas and foreign courts. Later on there might be a series of signed articles, like that on the English law of domicil by Oliver Round, a barrister of Lincoln's Inn, published in 1860.

But within that basic framework there was room for a vast amount of general social and professional history. Echoes are

Solicitors' Journal & Reporter.

Vol. I.—No. I. SATURDAY, JANUARY 3, 1857.

CONTENTS.

LAW NEWSPAPER COMPANY LIMITED.

CAPITAL, £6,000, IN 600 SHARES OF £10 EACH.

Directors.

OFFICES—13, CAREY STREET, LINCOLN'S INN FIELDS.

Cover of the first issue, showing the first directors

flare up into a final *corps à corps* when in 1861 the Law Newspaper Company disposed of its interest in the Journal (apparently to the printers, Yates & Alexander, though this is not quite certain) and was voluntarily wound up in 1862. An abortive attempt, seemingly instigated by Cox, to have it compulsorily wound up came to nothing.

There followed an unsettled period. Until August, 1862, William Draper, of No. 4 Holford Place, Pentonville, was the publisher. He was succeeded by Edward Johnston Milliken, of No. 12 Norfolk Villas, Bayswater, who published the Journal until 23rd September, 1876, and became proprietor at some date during this period. After him came his nephew, Henry Villers, whose long proprietorship was to mark an era in the history of the Journal.

It is not only the guerilla warfare with Cox and the *Law Times* which catches the attention in the early

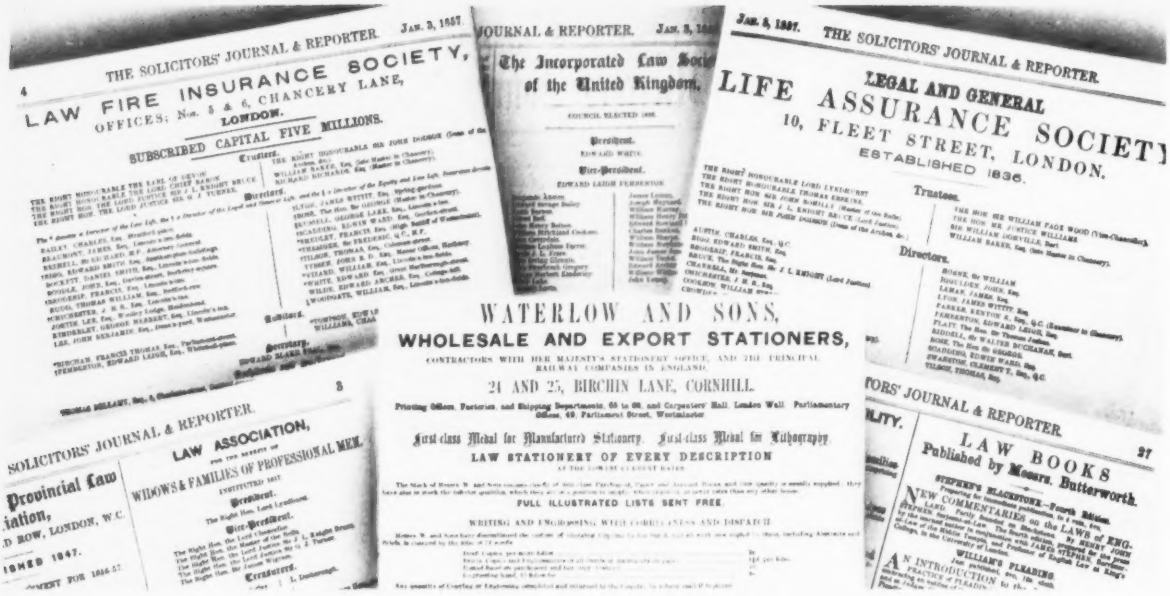
The approach to the Journal's office from the Temple : a drawing of Serle's Place, later demolished to make way for the Royal Courts of Justice

heard of the American Civil War, of a fund for the Lancashire unemployed thrown out of work by the cotton famine resulting from it, of the shock of the fourpenny rise in income tax in 1859. And from the advertisement pages one can catch suggestive glimpses of the mid-Victorian scene. Patent medicines are "puffed" without the inhibitions of our current ethics of publicity; there are peep shows and concerts; prospectuses of railway companies reflect the industrial energy and expansion then in full flood. Strongly characteristic of the time, in their solidity and sober cultivation of thrift and providence, are the announcements of the great insurance companies, many of them, like the Law Fire, the Equity and Law, and the Legal and General Societies, advertisers in the Journal throughout the 100 years of its existence.

If the gales which shook the office windows at the Journal's birth soon blew themselves out, the alarms and disquisitions of an able and angry opponent did not. Edward Cox of the *Law Times* was not the man to stand by inactive while a rival took the field unchallenged. He had boundless energy and great business acumen, and, while achieving some recognition in the law, becoming a serjeant and a judge at the Middlesex Sessions, he made a large fortune by establishing a sort of empire of periodicals, the *Field*, the *Queen*, the *Critic*, the *Royal Exchange* and others. When Serjeants' Inn was dissolved and its property sold, he was able to buy it for £57,100.

In its beginnings the *Solicitors' Journal* was fully occupied fighting for its survival against the repeated attacks launched by Cox, who saw in its initiation a personal affront and a criticism of his own paper, and reacted accordingly. For years a running fight was waged in the columns of the two papers. These are battles long ago which both the combatants happily survived, but the antagonism lasted long enough to

volumes. More strictly professional in its interest was the Divorce and Matrimonial Causes Act, 1857, which the Journal severely criticised as an attack on the institution of marriage. There was agitation for the concentration of the courts in an adequate building and news of the final selection of a site in the Bell Yard area. The accommodation at Westminster was impossibly inconvenient. To reach one of the courts there was an ascent of eighty-five steps and aged and feeble witnesses could not face it. Another court was " a recondite cell



Some advertisements in the first issue

with a single narrow access." Judges had to be hunted "up turrets and along galleries." There was outspoken criticism of the Lord Chancellor: "Lord Cranworth has been distinguished throughout his tenure of office by a passion for petty legislation. Any scheme of a large and comprehensive character was certain to be burked by the Lord Chancellor's doubts; but if a reform was sufficiently peddling it had a fair chance of receiving the highest patronage." The Journal reported a boom in limited companies with lists of directors "with names rich in prefixes and affixes." The Electric Power, Light & Colour Co., Ltd., failed, and the Journal was sarcastic about a scheme whereby "the subtle, all-pervading electric fluid" should be used "for the benefit of mankind and the enrichment of the shareholders in the production of power, light and colour."

As the 'sixties moved into the 'seventies there was news of the clearing of the site for the new Law Courts with plans for the development of neighbouring properties. There was a warm but critically qualified welcome for the new venture of the Incorporated Council of Law Reporting. There was a note on the financial difficulties of the railway companies. In 1868 there was a call for a good digest of the law. There was discussion of the need for a public prosecutor. The female franchise was already a topic. The law's attitude to criminal lunatics gave rise to a wide divergence of opinions. The understaffing of the judiciary was causing delays and a good deal of anxiety. The costs of litigation were a grievance to suitors. The great Tichborne imposture was a source of endless speculation. The new pleading and practice under the Judicature Act were setting endless puzzles to the profession. There was discussion of the Trade Union Act, 1871, and the observation that "strikes we must expect; they are the certain outcrop of the present relations of capital and labour."

The changes of ownership involved no change in editorial policy and direction, and throughout the first fifteen years of its life there is a constant reiteration of the Journal's aim of upholding the status of the solicitor. "Those who have prepared themselves by a costly education for the exercise of a laborious profession are entitled to demand that what are called . . . law reforms should not be used as instruments to impoverish and degrade the lawyers." The solicitor, it is constantly repeated, should, as far as possible, be a man of liberal education. The lad of sixteen who goes straight into a solicitor's office "may by good abilities and industry become a sound lawyer and a skilful man of business, but his knowledge of the law will be confined within the narrow region of technicalities and the general power of his mind will be stunted." The Journal seeks to interest solicitors in "the jurisprudence of other times and countries" and in the difficult questions which sometimes occupy our own courts. "Society," it declares, "would do justice to the solicitor if only he did justice to himself and if he considered his high position and arduous and varied responsibilities." The Journal was anxious for high educational standards as a qualification for solicitors and would not dispense with Latin and French. It believed in self-help. "If a man can raise himself above the rank of life where he was born the energy and perseverance thus called forth will make him valuable to society . . . But it is a great mistake to suppose that there ought to be no obstacles whatever in such a career. On the contrary, the good of the community requires that it should be arduous . . . Those who, for their eminent qualities, might claim to have the barrier removed will find means to pass it; and, as regards the others, it is well that such a barrier exists."

By 1870 the formative period was complete. The Journal was now well established, with a secure circulation and a solid reputation. The straits and narrows at the start of the voyage were left behind. Now for full sail on the high seas.

THE BROAD OCEAN

1872 1912

The mid-eighteen-seventies saw the start of a long period of steady consolidation for the Journal. In 1872 William Mitchell Fawcett became editor. In September, 1876, Henry Villers became proprietor. About the same time the offices of the Journal moved to No. 52 Carey Street, between Serle Street and the gate of Lincoln's Inn, and some four or five years later to No. 27 Chancery Lane, where they remained for the next forty years. Both Fawcett and Villers were young men when they began their connection with it. Fawcett was thirty-three in 1872 and Villers was thirty-three in 1876. For almost forty years they worked side by side in the closest harmony, finally dying within little more than a year of each other, both suddenly of heart failure. Fawcett collapsed in Lincoln's Inn on 4th July, 1912, with the proofs of the forthcoming issue on his table. Villers died on 12th September, 1913. After his death the ownership devolved on his widow, Mrs. Florence Villers.

Carey Street, north side, showing the offices in the 1870's

Fawcett was called to the Bar by Lincoln's Inn in 1862 and in Lincoln's Inn his whole professional life was passed. He was a most accomplished conveyancer and remained wholly faithful to his calling, satisfied with the craftsmanship of a chamber practice, for the *éclat* of self-advertisement was utterly alien to him. It is indeed characteristic of such a man that no portrait or photograph of him is known to exist. He was extremely courteous, cheerful and interesting in conversation, but work left him little time for social life. A memory of him has survived staying late at the office on press nights over black coffee and cigars, meticulously examining every line, and at eleven taking a cab home to Hampstead. One thing that he did for the Journal was to give it a form which it retained long after his time. Before him, it had been somewhat untidy in arrangement with odds and ends of news and anecdotes all over the place. He gradually gave it an impeccable neatness of production and a strict professional relevance in its matter. The enlargement of the pages and the improvement in the printing in 1882 represented a very great step forward. The quality of the paper used was also improved. In its early days, the Journal had been very outspoken and under Fawcett it still retained this characteristic. He had a good crisp interesting style of writing and a turn for ironic parody which, kept under strict control, was extremely entertaining and effective when he chose to use it. In his time, certain centralising trends in the social order were already becoming apparent and Fawcett always gave his support to the principle of individual as against official management in business and private affairs, just as in the long-discussed question of land transfer he was on the side of private as against official conveyancing. Under him the excellence of the Journal's conveyancing articles became a recognised feature, for, though he would never abandon old forms, save for good reason, believing that adherence to them greatly facilitated the work of the practitioner, he moved with the times and was alive to improvements in the conveyancer's art.

In his aim to make the Journal serve the best interests of the legal profession he worked in complete harmony with Villers, a man of sound business sagacity, genial

manner and easy temper who maintained cordial relations with everyone connected with it, so that no policy differences ever disturbed their collaboration. Under their long partnership the Journal held to the even tenor of its way, steadily developing in influence.

Victorian England was still firmly rooted in religious belief and the free-thinking Bradlaugh was excluded from the House of Commons. The monarchy in the person of the Queen was as stable as the nation's religion, and attacks on her, such as that of the lunatic Maclean who shot at her at Windsor in 1882, evoked strong demonstrations of sympathy. The Journal, commenting on his trial at Reading, where he was acquitted on the ground of insanity, compared the decorum of the proceedings favourably with those at the trial of Guiteau, who had recently shot the United States President. This was, incidentally, the case which (it is said, at the instance of the Queen) brought about the passing of the Trial of Lunatics Act, 1883, altering the verdict in such cases to one of "guilty but insane." The Journal quoted an unfavourable comment on the Act by Mr. Justice Watkin Williams. The Russo-Turkish War gave rise to discussions in the Journal on the international practice of not bombarding such buildings as hospitals or foreign consulates and on the possibility, if England should be involved in the war, that Russia might issue letters-of-marque to American privateers; later, on the Treaty of Berlin, the points commented on concerned the navigation of the Danube. Other topics which occurred in the Journal's pages were the right of the serjeants to sell Serjeants' Inn on the dissolution of the Order of the Coif and the leisurely progress in the building of the new Law Courts and finally their great ceremonial opening.

Time passed and soon the Married Women's Property Act, 1882, was proving a major puzzle to lawyers. The question of the fusion of the two branches of the profession was agitated for a while but after a time became quiescent. In 1888 the income tax fell from 7d. in the £ to 6d., but in 1889 the new death duties imposed a burden which in the unimagined future was to become overwhelming. Lord Halsbury's Public Trustee Bill was

Henry Villers (1843–1913)

strongly criticised in the Journal as "State socialism." There was also lively criticism of the incipient practice of smuggling concealed legislation through Parliament by bestowing on the Minister a power to make Rules.

Occasionally, the Journal indulged in a little fun. There was an excellent parody of the pompous and flowing congratulatory speeches which it was then fashionable for the Bar to make to judges on every conceivable occasion. Even better was the suggested precedent for the "conciliatory letter" which it had been held must precede proceedings for restitution of conjugal rights. The form began: "Beloved Sir [or Madam] We are instructed by our client, your loving wife [or husband] Araminta Jones [or John Jones] in pursuance of r. 175 of the Rules in Divorce and Matrimonial Causes to intimate that she [or he] is pining 'to live with thee and be thy love'." It concluded with an intimation that if the defaulting spouse did not comply the client of the writer "will have the pleasure of attempting a joyful reunion by the instrumentality of the Probate, Divorce and Admiralty Division."

The Journal's fortieth year coincided with the celebration of Queen Victoria's Diamond Jubilee in 1897. Two years later came the Boer War. Two years more and Victoria died. Though in 1902 the war ended, the old sense of security was gone. The financial world was the hunting ground of overblown adventurers like Whittaker Wright. There was great distress among the unemployed and a new sense of the rights of the labouring classes was reflected in the Workmen's Compensation Act, 1905, following and correcting the Act of 1897.

The pages of the Journal reflected the changing world. Topics touched on in this period included Whittaker Wright's conviction and suicide and the subsequent passing of the False Statements (Companies) Act, 1904. There was a lecture on "the Vindication

Advance of simplicity: the cover evolves

The Opening of the Royal Courts of Justice *Picture Post Library*

of the Legal Rights of the Poor in Civil and Criminal Courts," delivered at a meeting of the Solicitors' Managing Clerks' Association; a pungent criticism of habitually facetious judges, obviously aimed at Mr. Justice Darling; and again a note on the increasing tendency to legislate by Statutory Rules and Orders so that the Acts conferring the powers to make regulations were themselves often mere skeletons. Among new legislation commented on were the Public Trustee Act and the Act establishing the Court of Criminal Appeal. Motor cars were finding their place in legislation and judicial decision. Fraudulent "beauty doctors" were cheating their female customers. In their domestic affairs, The Law Society had extended their premises northward to provide a smoking room which a lady artist had decorated; the opening ceremony was performed by King Edward VII. In 1907, the year of the Journal's jubilee, noisy motor bicycles were becoming a problem. In 1909, the question of aerial navigation in relation to international law was discussed. Land registration had not yet in 1907 proved itself a success in the opinion of the Journal. Female emancipation was proceeding, but not fast enough for some women. Now women were eligible for seats on local authorities, but the militant suffragettes were organising a propaganda campaign of violence and wanton damage; the Journal discussed the question of effective civil remedies for their victims. In another sphere there was the decision of The Law Society to have the portrait of David Lloyd George painted for its walls, but in 1910 he hurt his fellow solicitors by publicly accusing them of blocking every reform which might diminish costs. The question of trade unions and contracts in restraint of trade came up in the Journal, and in 1911 Winston Churchill, then Liberal Home Secretary, suggested that the judges showed "unconscious bias" in deciding trade union cases. But soon these pre-occupations were to be submerged by the overriding claims of war and war-time legislation, and it was fitting that Fawcett, who had guided the paper through so long a period of calm, should have relinquished the helm before the cataclysm to come. His death in 1912, followed in the next year by that of Villers, was truly the end of an era.

STORMS AHEAD

1912 1920

John Mason Lightwood (1853 1947)

In the last years of Fawcett's editorship the conflicts of the time had been threatening to burst into general conflagration. The most dynamic figure in the Liberal Party was David Lloyd George, a solicitor from Wales, who as Chancellor of the Exchequer declared a war of taxation on the privileges of wealth. The sequel was a constitutional crisis when he clashed with the House of Lords, the outcome of which was the Parliament Act, 1911, the first major measure of the reign of George V, which drastically curtailed the powers of the peers. In that year, too, the National Insurance Act was passed, a seed which was to grow into a formidable tree in the uncertain future. Herbert Asquith, a leader of the Bar, was Prime Minister and when in 1914 international tensions reached breaking point and war came, he led the nation into battle with Lloyd George as his most energetic lieutenant.

Amid the gathering clouds John Mason Lightwood succeeded to the editorship of the Journal on the death of Fawcett, whose assistant he had been. Born in 1853 and called to the Bar in 1879 by Lincoln's Inn he, like his predecessor, was a conveyancer. He early became a contributor to the Journal and other legal periodicals, writing on conveyancing subjects. He remained its editor until 1924, when he took over the editorship of the *Law Journal*. His tough vitality kept him active until his death in 1947 at the age of 94, when he was senior conveyancing counsel to the court. Lightwood faced a task which was not, perhaps, ideally suited to his talents. A conveyancer and draftsman by natural bent, he had in the first half of his editorship to attune the Journal to a legal atmosphere very different from that traditional to Lincoln's Inn. Emergency legislation of a kind to which later generations were to become accustomed began to pour from all the departments of government, and it fell to him to make it intelligible to the legal profession.

The stalemate of siege warfare in Northern France, the Russian reverses in the vast spaces of eastern Europe and the struggle at sea by submarine and blockade indefinitely prolonged the conflict, and under the Defence of the Realm Act and its brood of regulations the English submitted to a stricter State control of all the activities of life than would have been dreamt possible. In 1915 the Increase of Rent and Mortgage Interest (War Restrictions) Act brought a new and permanent feature into the relations of landlord and tenant. There was political innovation, too. In 1917 the Representation of the People Act accorded universal suffrage to men and qualified suffrage to women. Though the complexities of war-time regulations were foreign to his real interests, Lightwood yet contrived to keep the legal world informed of their significance through the pages of the Journal. We read of the Military Service Acts, the myriad Food Orders, the legal aspects of air raids and air-raid damage. The early stages of the revolution which overthrew imperial Russia called forth an article on the constitutional law of Russia. For better or worse the world was never to be the same again.

Meanwhile, economic pressures developed, and in 1917 the subscription rate was raised from 20s. (to which it had fallen in 1870) to 30s., and again in 1918 to the original figure of £2 12s.

The office organisation, too, was reduced to the simplest. W. E. Taylor, who had been there for many years, starting as a boy remunerated at 5s. a week at the time of the Queen's Jubilee, now kept the day-to-day business of the publication going with the help of his wife and two sons, aged about 10 and 13, who effected the local deliveries, then and long after made by hand. It was a remarkable achievement, which was to be closely paralleled in the war to come. Taylor completed a lifetime of service to the Journal when he retired at the end of 1946 at the age of 72, after 57 years on the paper's staff.

W. E. Taylor to-day

UNEASY CALM

1920 1939

Under Lightwood's continued editorship, the Journal was now preparing for the tasks of peace. Reform of the law of real property was in the air, the dawn of a new day for the conveyancer after the dark and unfruitful night. But there was still the aftermath of war, and the Journal discussed the legal aspects of the war guilt of the fugitive German Emperor, while the League of Nations and its possibilities were a continually recurring topic.

During this period a significant event occurred in the story of the Journal. Since the dissolution of the Law Newspaper Company in 1862, the paper had been in the hands of non-legal proprietors, honest and competent certainly, but concerned primarily with commercial considerations far removed from the ideals of Shaen and his mid-Victorian colleagues. In 1920, The Solicitors' Law Stationery Society, Ltd., acquired it, restoring its close connection with the branch of the profession for which it was created, for the Society, like the founder company, drew its directors and members almost exclusively from among solicitors. The offices were moved from No. 27 Chancery Lane, where they had been for close on forty years, first to No. 104 and a few years later to No. 94 Fetter Lane. Another consequence was that the printing of the paper, hitherto carried out by Wyman & Son, Ltd., as successors to the original printers, was from then on transferred to the new proprietors' own printing works. Even Shaen cannot have dreamed of a day to come when his paper would be run off on presses owned by members of his own profession.

For Lightwood the new order does not seem to have been an entirely happy one. Unaccustomed as he was to working with an active proprietor, he apparently found the close interest taken by the Society's board of directors distasteful, and his resignation at the end of 1924 caused little surprise.

He was succeeded by Joseph Hume Menzies, a barrister of Lincoln's Inn called in 1902, an amiable, bookish, learned, talkative man of great thoroughness but too discursive for editorial responsibility. He had been sub-editor under Lightwood from 1920 until March, 1922, but the early termination of this arrangement made his later appointment to the senior post somewhat surprising. At any rate, it did not endure, and in October, 1925, on the recommendation of Sir Benjamin Cherry, a successor was found in David Hughes Parry who, after distinguishing himself in his legal studies at Cambridge, was called to the Bar in 1922. While carrying on his practice, he combined it

Professor Sir David Hughes Parry, Editor, 1925–1928

with a notable academic career, holding a succession of responsible offices at the University of London and serving as Vice-Chancellor. In 1951 he was knighted. He remained editor until November, 1928.

Parry's occupancy of the editorial chair, though short, was distinguished. Many important issues were current at this time, among them the growth of bureaucracy, the proposed nationalisation of the coal mines, the aspects of trade unionism emerging from the General Strike, and the admission of women to be barristers and solicitors. But the great event of the period from the point of view of legal development was the property legislation of 1925, which in the succeeding years the Journal did so much to elucidate. Parry was fully equal to the task. With the able and energetic assistance of William Harding, a former Town Clerk of Wood Green, who became assistant editor at the end of 1925, he marshalled the services of the greatest authorities in conveyancing to expound the new legislation. The sole rights were secured to reprint A. F. Topham's lectures; contributions were obtained from Sir Benjamin Cherry and T. Cyprian Williams, and many other illustrious names constantly appeared in its pages. The size of the weekly issues grew beyond all precedent. These were great days for the Journal, but amid the bustle the editor and staff found time to move the offices in 1927 to No. 29 Breams Buildings, where they were to remain (apart from a few months away during 1941 owing to war damage) until their complete destruction by a flying bomb in 1944. Harding was a shrewd and thrusting lieutenant who appreciated the value of discarding the tradition of anonymity among

J. R. Perceval Maxwell, Editor, 1928–1929

the contributors, and his keen sense of publicity did much to increase the Journal's circulation. He remained assistant editor until 1931 and died less than a year later.

Meanwhile, the increasing claims of Parry's academic career had made it impossible for him to retain the editorship, and on his resignation in November, 1928, he was succeeded by J. R. Perceval Maxwell. Maxwell, who had been called to the Bar in 1923 by Lincoln's Inn, practised as a conveyancer, but soon relinquished his appointment to become a Parliamentary draftsman, and in April, 1929, Thomas Cunliffe, son of Sir Herbert Cunliffe, K.C., followed him. He was called to the Bar in 1922 by Lincoln's Inn and also practised at the Chancery Bar.

Fawcett apart, Cunliffe remained editor for a longer period than any other holder of the office. His editorship marked a period of consolidation. Regular features were established on a footing of continuity—the County Court Letter, the Conveyancer's Diary, the Landlord and Tenant Notebook and the Practice Notes. Many of them still survive. The notes of recent decisions in the courts attained at this time a high reputation for promptitude and clarity. Side by side with these features the flow of individual articles continued and papers of general interest, such as Sir Cecil Hurst's Reading at the Middle Temple on the Permanent Court of International Justice, were printed in full. During these years the conveyancing contribution in the hands of Herbert Clements, a former solicitor who was called to the Bar in 1920, was very highly regarded by the profession. An innovation in this period was the introduction of lighter features—"Legal Parables" (or satirical moral tales on legal themes), a parody in several parts called "Alice in Police Court Land," and a weekly column, "In Lighter Vein," in which topical notes on the less serious happenings in the legal world were set against historical parallels. This column soon enlarged its scope, becoming "To-day and Yesterday" and including a note of an anniversary in legal history for every day in the year ("a fragrant tort for every day," as it were).

The appeal of the Journal had never been broader than now. The editorial policy under Cunliffe was to allow the regular contributors a very high degree of autonomy and security which encouraged in them a pride and an interest in their connection with the Journal.

The professional world at this time was curiously unaffected by the events of politics and statesmanship. Moreover, it had few pressing problems of its own. The solicitors were no longer, as in the middle of the previous century, struggling for recognition. They had arrived. They had a recognised status. They were satisfied and secure. After the Law of Property Act and its attendant legislation in 1925 there were few major novelties on which to comment. Even the trends indicated by the Marketing Acts passed without much comment in the Journal's pages.

Mr. Registrar Thomas Cunliffe, Editor, 1929–1948

AGAIN THE STORM

1939 1946

The year 1937 found England with a new King, George VI succeeding unexpectedly to the throne on the death of his father, followed so soon by the abdication of his elder brother. The tensions in international affairs produced an ever-increasing strain and the rule of violence among the peoples of the world, inaugurated by Hitler and Mussolini, carried the nations down the steep gradient which, with the invasion of Poland, led to war in 1939, a war which in the next six years engulfed almost the whole world.

Siéyes, when asked what he did during the French Revolution, replied "*J'ai vécu.*" During the war the Journal survived. Since 1931 J. E. Thompson had been the chief assistant in the office on the editorial side, while S. L. Godfrey looked after the business side. On the eve of the declaration of war Thompson was suddenly called to the colours on press day, leaving Miss Hilda Merriman, who had been his assistant for several years, to cope thenceforward with the problems of production as best she could. She did cope, with characteristic competence, with unimaginable difficulties. Soon Godfrey, too, was called to the forces, and the problems of continued publication fell upon P. J. Chance. He and Miss Merriman, by dint of inspired improvisation and dogged persistence, kept the wheels turning and at the end were able to say (with another well-known institution) "We never closed." In May, 1941, the office was damaged in the fire raids which almost cleared of buildings the tangle of little streets and courts stretching from Fetter Lane eastwards almost to Shoe Lane. The Journal migrated to a temporary home at No. 22 Chancery Lane. Then, returning in September, it remained immune until July, 1944, when a flying bomb finally demolished the office, necessitating another move to No. 88 Chancery Lane. As war-time shortages cramped every activity, the quality of the paper available grew worse and worse, while the print grew smaller and smaller, but, though during one crisis in its production the Journal appeared very late indeed, there was no break. Shrunk to less than half its normal size, it was filled with discussions on the working of the emergency powers legislation, the liability for war damage and the effects of war on contract.

Breams Buildings : July, 1944 *photo Mirrorpic*

REFITTING

1946 — 1950

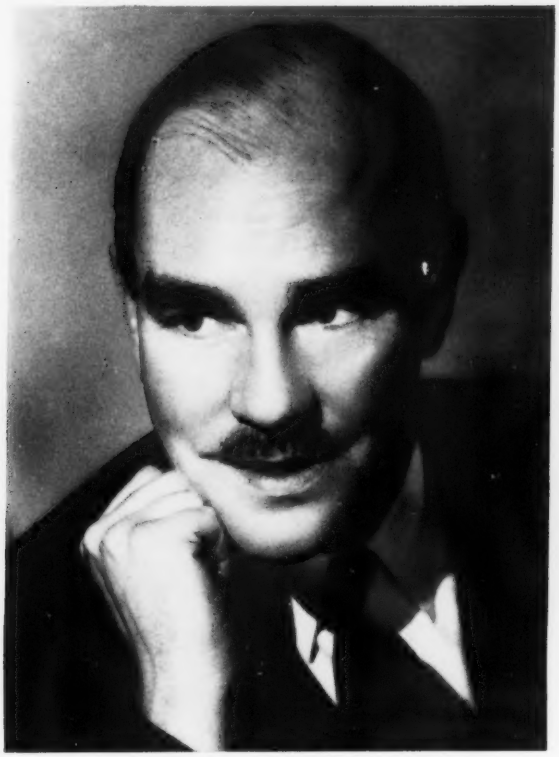
The shrunken size of the issues was accompanied by an inevitable decline in circulation. Former contributors were scattered over the face of the globe, some never to return. Economic dislocation became ever more severe and the subscription rate, which had stood at £2 12s. since 1918, rose to £3 in 1940 and again to its present figure of £3 15s. in 1951. When the fighting ended in 1945 reconstruction began. A redesigned typography adopted at the beginning of 1945 foreshadowed steady progress during the next ten years in modernising presentation. In October, 1945, Miss Merriman's devoted work through the war years was appropriately recognised when she was appointed assistant editor. In the same month, Godfrey resumed the business management of the paper on demobilisation. Both appointments proved transient, however, ending late in 1946 when Godfrey died suddenly and Miss Merriman retired.

Thus the post-war problems were taken into new hands, Chance becoming business manager, assisted by W. J. C. Pavey and R. Bishop on the advertisement side, with A. C. Monahan as assistant editor and R. L. Nicholson as his *aide*. The year 1947 was marked by a curious incident when in February the "fuel crisis" brought about the suspension of all periodicals for two weeks by ministerial decree. The Government afterwards admitted it had no legal authority to do so. The two issues so missed are the only break in continuity of publication ever suffered by the Journal.

At the start of 1948 John Passmore Widgery, who had been a solicitor until 1946, became editor in succession to Cunliffe, soon to be appointed a Registrar in Bankruptcy. Monahan, now as managing editor, coped with the day to-day problems of the Journal. It was a period of return to first principles, of restoring the Journal to its original function as a periodical specially designed for solicitors; the test for copy became: Is this what the practising solicitor would want to read? Special attention was paid to topics such as costs with which, in the nature of his work, the solicitor must be constantly concerned, as well as to such matters as filing systems and office efficiency. Taxation and town and country planning were constantly recurring themes. The quality and completeness of the summaries of recent decisions were ensured by an arrangement with the Incorporated Council of Law Reporting whereby its reporters supplied notes of the cases which were simultaneously reported in the *Weekly Law Reports*. The established features continued, Company Law and Practice, the Conveyancer's Diary, the Landlord and Tenant Notebook, Points in Practice, Current Topics and, of course, there were the other normal features of such a periodical, professional news, book reviews and correspondence. It was also recognised that a solicitor should not be a mere legal technician. (That was most emphatically the opinion of William Shaen, the Journal's founder.) Accordingly, literature, history and laughter were within the range of what he would look for in his professional reading. In that sphere "Here and There," by Richard Roe, "Talking 'Shop'," by Escrow, and "Country Practice" by Highfield, each with its own personal flavour, received an unmistakable welcome from the readers.

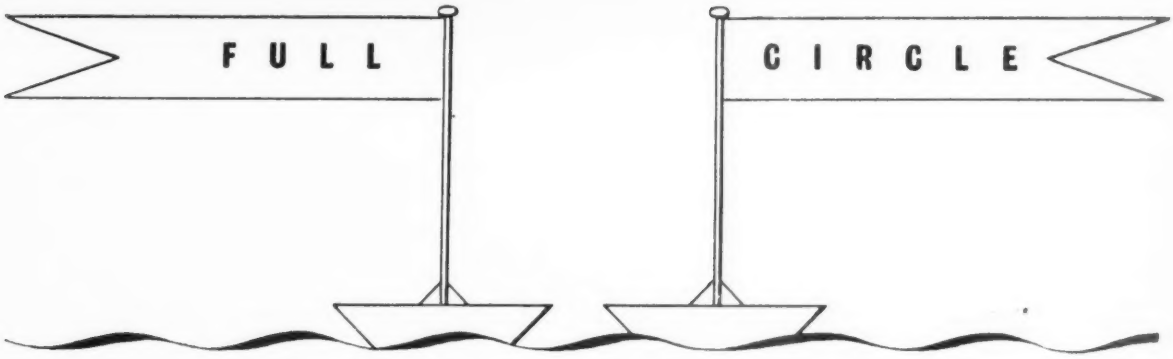
Along with this reconstruction came other improvements. The Journal returned to its former size, while the standard of presentation in printing, paper and general appearance was raised by every practicable device, and in this process the printers, as always, played a full and co-operative part. The advertisement pages reflected this vigorous resurgence; the continued support of advertisers of long standing was augmented by the appearance of many new names. The response in terms of circulation was equally speedy and emphatic. The wartime loss of readers was soon recovered and before long even the previous highest level reached in the late 1920's was surpassed. The climb continued and to-day the circulation stands at about twice its pre-war figure. It is still rising steadily.

Modernisation of typography



John Passmore Widgery, O.B.E., T.D., D.L., Editor, 1948–1955

Philip Asterley Jones, Editor, 1956



In 1951 the offices had moved into the war-damaged building of The Solicitors' Law Stationery Society at No. 102 Fetter Lane. In 1955, during rebuilding, they crossed Holborn to a temporary home at No. 21 Red Lion Street, almost overlooking the paper's birthplace at No. 8 Bedford Row. Fortuitous though this was, the move was in tune with the Journal's deliberate return to its original purpose. The law at large was, and is, well served by its periodicals, but the solicitors' branch needed and still needs its own special organ, and when, at the start of 1956, Philip Asterley Jones, a Hertfordshire solicitor, became editor, the wheel had in truth come full circle, as his restatement of policy in this issue amply demonstrates. Shaen's vision of a hundred years ago had never been so fully realised: owned by solicitors, printed in a factory owned by solicitors, and now at last edited by a solicitor, the *Solicitors' Journal* moves forward confidently into 1957 and the start of its second century of service to the profession.

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Divorce Law—The Last Fifty Years—contd. from p. 14]

reconsideration and it may be that the standard of proof required, although higher than that required in an ordinary civil court, is not as high as that required to prove a crime. But the burden of proof clearly rests on the petitioner and the onus of proving "beyond reasonable doubt" is heavy.

As to cruelty, this expression has indeed been restrictively construed by the court. To amount to cruelty, the conduct must be "grave and weighty"[4]; must cause injury to health, either actual or apprehended; and must be "aimed at" the petitioner (see *Westall* v. *Westall* (1949), 65 T.L.R. 337, and more particularly *Kaslefsky* v. *Kaslefsky* [1951] P. 38).

It seems from *Kaslefsky* v. *Kaslefsky* that, if the conduct consists of actions or words actually or physically directed at the petitioner, it is "aimed at" the petitioner and may be cruelty although there is no actual intent to injure. But if the conduct only indirectly affects the petitioner (e.g., drunkenness, gambling, laziness, etc.), then it can only be said to be "aimed at" the petitioner when done with intent to injure the petitioner. If the conduct is exceptionally grave, the court may draw the inference of intent to injure from the conduct itself, but unless the conduct is exceptionally grave the court will decline to infer the intent from the conduct and then the petitioner will fail unless he can bring actual evidence of intent to injure. In the normal case of conduct indirectly affecting the petitioner, it is quite impossible to call this evidence. So by insisting on proof of intent to injure in such cases the court has largely removed from the field of cruelty cases of conduct "indirectly" affecting the petitioner.

Desertion

Desertion has had a similar restrictive development.

In desertion there are two elements, namely, the fact of separation or the cessation of cohabitation and the intention to desert. To be a ground for divorce both elements must have lasted at least three years and still exist at the date the petition is filed. The fact of separation is usually obvious, but difficulties may arise where the parties reside under the same roof. Next, the separation must be without "cause," for if the respondent has "cause" for leaving he is not in desertion.

As to intention, the respondent must have had that intention at the time of the separation and must continue to have it throughout the three years. It is this insistence on intention to desert which distinguishes desertion from agreement to live apart. The cases show that if the respondent ceases to have an intention to desert during the three years, he is no longer in a state of desertion.

Even though it starts, desertion is brought to an end by a bona fide offer to return; resumption of cohabitation; and by the deserted spouse making it clear that the deserting spouse would not be received back, of which an example is the commission of adultery by the deserted spouse.

The restrictive attitude of the courts can, however, best be seen in regard to constructive desertion. Here the deserter is not the one who goes but the one whose conduct causes the other to go. At first sight, the evolution by the courts of such a doctrine would indicate a widening of the ground for divorce, but the evolution has in fact been within extremely narrow limits. To succeed, the petitioner must prove two elements similar to those in ordinary desertion, a driving away (or the fact of separation) and the intent to bring the matrimonial life to an end (or the intention to desert). A point on which there has been much judicial conflict is as to whether the petitioner must call actual evidence of this intent to drive away or whether the court will infer the intent from the conduct.[5] This conflict appears to have been resolved recently by the Privy Council (in *Lang* v. *Lang* [1954] 3 W.L.R. 762), and the correct test would appear to be that a respondent is guilty of constructive desertion only where it can be shown that that respondent knew that the probable result of his conduct would be that the petitioner would be compelled to leave and notwithstanding that knowledge persisted in the conduct; then and only then an intention to drive away will be presumed from the conduct, and this presumption will not be rebutted by an actual desire on the part of the respondent that the petitioner should remain. This severe burden of proof on the petitioner really removes from the field of constructive desertion all cases other than those of what may loosely be described as "courses of conduct" as contrasted with isolated acts.

An even more technical restriction on constructive desertion cases has recently appeared. Conduct must be "grave and weighty" to amount to cruelty. Suppose conduct is of the nature of cruelty but is not sufficiently serious or "grave and weighty" to amount to cruelty, then it seems clear that conduct cannot be used to support a charge of constructive desertion. The reason is that if conduct is of the nature of cruelty (e.g., blows or words) it is cruelty or nothing, and if it is not sufficiently serious to amount to cruelty, then it is nothing.

Thus, the courts have resolutely refused to make divorce easier under the guise of cruelty or desertion.

Discretion cases

Two other developments can only be shortly noted. One is the change in the attitude of the court towards the exercise of discretion in favour of the petitioner who has committed adultery. In 1912 it was said that the discretion was a judicial one to be exercised "cautiously and carefully and as far as possible consistently, not only in regard to the parties themselves, but also with reference to the interests of public morality." The authoritative modern statement of the matters which should be taken into account in deciding whether or not discretion should be exercised in the petitioner's favour was made by the House of Lords in *Blunt* v. *Blunt* [1943] A.C. 517.[6] There is no doubt that discretion is much more freely exercised than formerly, especially where there is no hope of reconciliation, but there is the prospect that, if free to do so, the petitioner (and even, possibly, the respondent) may regularise his adulterous union by marriage.

[4] The first use of this phrase that I have found was by Hodson, L.J., in *Pike* v. *Pike* [1954] P. 81*n*. This in fact was a 1952 case. The expression has since been much used, see e.g., Denning, L.J., in *Timmins* v. *Timmins* [1953] 1 W.L.R., at p. 761, and conveniently expresses the fact that conduct to amount to cruelty or "cause for leaving" (see *Hill* v. *Hill* [1954] P. 291) must be more than mere trivialities.

[5] See hereon *Boyd* v. *Boyd* [1938] 4 All E.R. 181, disapproved by *Edwards* v. *Edwards* [1948] P. 268, approved by Denning, L.J., in *Hosegood* v. *Hosegood* (1950), 66 T.L.R. 735, and finally disapproved by Merriman, P., in *Simpson* v. *Simpson* [1951] P. 320.

[6] The matters which should be taken into account are (1) the interests of any children of the marriage; (2) the interest of the person with whom the petitioner has committed adultery with special regard to the prospect of future marriage; (3) the prospects of reconciliation between husband and wife; (4) the interest of the petitioner, particularly that he should be able to remarry; (5) the interest of the public weighing the sanctity of marriage against the undesirability of maintaining a union which has broken down.

Lastly, as already noted, since 1923 the rights of husband and wife in substantive law have been the same.[7] But in ancillary matters the wife has much greater rights. Although only the husband can claim damages from an alleged adulterer,[8] the wife alone can claim maintenance after a divorce or alimony pending suit[9] or security for costs. In procedure, a wife does not have to obtain leave from the court in order to allege adultery with an unknown woman. The Royal Commission considers that the time has come to abolish these differences and to give the husband the same right as the wife to maintenance and alimony, to abolish the wife's right to security for costs and even to place the spouses in the same position in regard to presumptions of gifts and trusts. Truly a turning of the wheel when the emancipation of husbands becomes necessary.

[7] Except that a wife can petition on the ground of the husband's rape, sodomy or bestiality (cf. note (1), above). The Report of the Royal Commission (see para. 210) recommended that either spouse should be able to obtain a divorce on the ground that the other spouse has been guilty of sodomy or bestiality.

[8] Matrimonial Causes Act, 1950, s. 30. The Report of the Royal Commission (para. 434) recommended that the wife should be given the right to claim damages from the adulteress.

[9] The husband can only claim maintenance or alimony where the wife is the petitioner on the ground of the husband's insanity (Matrimonial Causes Act, 1950, s. 19 (4)).

The Solicitor in the Criminal Courts

J. F. JOSLING

FIRST of all, what is it that distinguishes the crime specialist in our ranks from the general run of our branch of the profession? Is it just a penchant, natural or perforce acquired, for the more persuasive sort of advocacy? Or the ability to discipline himself suitably during the taking of depositions against his client?

Neither of these solely. The special features of the position of the solicitor in criminal matters are not confined to his work in court. His whole relationship with his clients is affected by the nature of his practice. By and large the clientèle is likely to be nomadic, and there will be much less social contact with individual clients than is often the case in other kinds of practice. Many will see in this anything but a drawback from the viewpoint of a professional man who likes to be the master of his leisure. It certainly need in no way impair the discharge of the solicitor's duty: to cultivate the right kind of detachment is a precept for any adviser, while the greater significance to the client of the outcome of the case is inclined to militate in criminal work against the deplorable temptation, encountered in many successful practices, to regard the client as a mere trigger to set off the mechanism of another more or less lucrative transaction. Not much effort of conscience is needed to look upon clients in trouble as very much more than just grist to the mill.

Side by side with this impartially responsible approach to clients there is discernible a healthy absence of routine in the crime section of a solicitor's office. Each case requires individual treatment and there is correspondingly little scope for stereotyped methods of work and the automatic filling up of forms according to precedent.

Defending

Inevitably the bulk of the average criminal specialist's work will be done on behalf of the defence, and it is in this role that the solicitor most nearly conforms to the popular idea of a lawyer. But we must be careful not to give too high a colour to the slang expression "mouthpiece" as used in this connection. Whilst it is axiomatic that every accused person is entitled to have skilled assistance and representation in putting his story before the court, our branch of the profession can only continue to hold the respect of the bench and of the public generally if the proper limits of the defending lawyer's function are observed. The Secretary of The Law Society has recently epitomised the matter in a paper submitted to the Commonwealth and Empire Law Conference: "Where the solicitor suspects the truth of a statement by a client or witness, he is under duty to warn that person of the importance of telling the truth, but if, *prima facie*, the evidence is false, the solicitor should take steps to verify the statement or otherwise before putting it in." Clearly, to undertake defences is sooner or later to invite a test of strength of character.

Scarcely less ability in man-management may be required in less sinister circumstances when, as very often happens, a client has no defence to a charge, and it is necessary to advise him that his best course is to plead guilty and rely on a strong plea in mitigation. The distinction between matters of defence and mere mitigating factors is often quite novel to an accused person, and needs tactful as well as firm explanation.

Mitigation

To plead effectively in extenuation of a proved or admitted offence becomes a more difficult task the more frequently the advocate attempts it. The search for some new way of saying that there are many degrees of a particular offence and that this is only a venial instance, and an isolated one at that, that the client has hitherto borne a good character and was led astray by someone not before the court, and all the other clichés (any of which may in fact be very pertinent to be said) is an exercise surpassed in potentiality for frustration only by the formal "I have taken into account all that Mr. *X* has so ably said on your behalf" which often appears to be its only appreciable result. But what may be called the constructive plea is gaining favour in appropriate circumstances. In this a conscientious endeavour is made to probe the real reasons for the particular crime and the personality of the person charged. Enlightened benches are becoming more zealous to find the true cause of the defendant's departure from the arrow path. "Can you help us to

understand how you came to do this thing?" is more often heard to-day than the old-fashioned "What have you to say?" or simply "Anything against him?"

The future

There is nothing in the signs and portents to suggest that the place of the solicitor in the administration of criminal justice is likely to decrease in importance within the foreseeable future. On the contrary, recently expressed opinions at very high levels give some ground for expecting that the policy of enlargement of the magistrates' jurisdiction which was followed in the earlier years of the century may sooner or later be resumed. Road traffic law added more statutory summary offences only last year, and a new crop of "shortage" crimes is ominously heralded by the rationing of petrol, which, if experience is any guide, may well offset any falling off in motor car offences proper. If some day the limit of the justices' powers of passing sentence of imprisonment should be increased, say, to twelve months for any one offence, it is possible that prosecutors may open many cases as for summary trial which now go to indictment.

In this enlarging field the solicitor will undoubtedly continue to play the same vital part as hitherto. Even where the client has no positive defence, few are likely to deny the usefulness of the solicitor's function, if only in ensuring that the prosecution's case is properly proved. The presence of a defence solicitor, too, is a safeguard against the tendency, noticed in some quarters, for the police to appear to be running the court. Neither will the true interests of the police suffer by their having to meet an occasional challenge to their evidence.

There has been something of an agitation to ameliorate the rigours of the process of taking down depositions in indictable cases. No one will oppose any improvement which tends to lessen the tiresome waste of time at this stage of a case. But let it be said quite plainly that the recording of depositions in the presence of the defence is not a step which those habitually appearing for defendants would willingly see abolished altogether. This is an invaluable opportunity for the defendant's solicitor, an "earpiece" rather than a "mouthpiece" for the time being, to observe the demeanour of the prosecution's witnesses.

The prosecutor

Apart from defence work, a solicitor practising in the magistrates' courts may properly aspire to a task perhaps less exciting, but no less difficult to do well, the representation, on the instructions of the police, the local authority or a private prosecutor, of the prosecution. Compared with the job of defending, the formal side of prosecuting in court gives a sensation like that of freewheeling on a bicycle. The main effort has gone before. But it is a deceptive impression. That the overreaching concern of our criminal law for a fair trial, not only in substance but in manifest appearance as well, is far from diminishing, is constantly being demonstrated to the whole country. Many laymen must have been surprised by the Attorney-General's references in the Commons last November to the careful facilities afforded to the defence in serious cases for the inspection of documents and the tracing of possible witnesses. It is, of course, but a part of a wider spirit of fair play which must inform the work of prosecutors throughout the common-law countries.

Yet this is not all. It was Mr. Justice Devlin who recently referred to the need for due firmness in prosecuting if the situation of the judge is not to be made more difficult than it is. In holding the balance between a properly forceful presentation of their cases and the inexorable requirement of strict fairness to the accused, prosecuting solicitors in the magistrates' courts will undoubtedly continue to conform to the highest standards. The reputation of the profession demands no less.

Some Aspects of Litigation To-day

J. C. WALKER

A SOLICITOR returning now to litigation after an absence of twenty years or so would find himself in quite a different atmosphere. He would find some of his old worries and nightmares had disappeared and some new ones in their places; but most of all he would find that the rough and tumble of litigation had gone. To be engaged in litigation is now, in the eyes of the profession, most respectable, and litigation itself has become an extremely polite undertaking. The "Bear Garden" contains no bears and has become as quiet and select as a girls' school; conversation in the Crypt appears to be confined to the international situation instead of to the latest scandal about Mr. Bloggs, K.C., or Mr. Justice Blank.

A business affair

We are still concerned to see that justice is done, but we do so now quietly and politely and reasonably and without any of the fuss and bother that we used to see. No longer do we hear the sob of anguish or the bellow of righteous anger from counsel, and no longer do we hear the ominous tap-tap of the judge's pencil which usually preceded some scathing remark about the witness or his advisers. Litigation is to-day almost a purely business affair with the personal aspect well in the background. This is due almost entirely, I think, to the fact that most of the litigation in the Queen's Bench Division concerns industrial accidents or running-down cases. It is easy to stir up a lather of indignation over a betrayed young thing of twenty, but it is extremely difficult to do the same over a defective crane.

On the whole, justice has not suffered from this change of outlook and approach, and in one aspect at least it has gained considerably. "Clever" pleadings, surprise and sharp practices and refusals to concede anything to one's opponents are now almost things of the past. The courts and those who practise in them are to-day, more than ever, determined

to have cases tried on their merits, and this has had the result of extending greater latitude in the preparation of pleadings. It is comparatively easy to obtain leave to amend pleadings, and on many occasions leave has been granted to amend pleadings late in the course of trial. It is considered to-day to be very ungentlemanly not to grant your opponent at least two extensions of time for delivery of his pleading—a very different state of affairs from the old days when one's application to the master for only one extension was usually opposed quite bitterly by one's opponents. The various excuses offered in support of these time summonses were so varied, and sometimes so amusingly fantastic, that a faint regret can be felt at the substantial lessening of these summonses. The older solicitor may have had a more exciting and interesting time than his modern counterpart, but, on the whole, I think that he grew more grey hairs.

The Public Authorities Protection Act and the Fatal Accidents Act were always a source of worry—I wonder how many solicitors have had the nightmare of dreaming that they had forgotten to issue their writ within the twelve months? The increase of this period to three years by the Limitation Act, 1954, was greeted with heartfelt sighs of relief by everyone—even the slowest of us can usually make up his mind about liability in three years.

Costs

Financially, the modern solicitor is in a much worse state than his predecessors. Costs have increased by only 16⅔ per cent. but overheads have increased to astronomical heights. As has recently been pointed out, a practitioner to-day just cannot conduct a successful action without having to present his client with a solicitor and client bill. If he has a substantial litigation practice enabling him to deal with many interlocutory matters on one visit to the courts, he can afford to reduce that bill to his client considerably, but otherwise he cannot. It is becoming extremely difficult to explain to a client why he has to put his hand fairly deeply into his own pocket when he has just won his case.

This thought leads to the subject of legal aid. Under the old Poor Persons Procedure, a successful defendant against a plaintiff proceeding under that procedure did at least have the satisfaction of knowing that the plaintiff's solicitor received nothing. Nowadays, a successful defendant not only has to pay his own solicitor's costs, but has also the bitter knowledge that the plaintiff's solicitors will receive their full charges (less 15 per cent.) and that he, the defendant, will indirectly help to pay them through his taxes! That seems to be rubbing it in too much, and certainly it makes very difficult one's task of persuading one's client of the justice of it. I think that most of us will agree that if the State is prepared to finance an action against an individual then responsibility ought to be accepted for the costs of the other party if he is successful in the action.

Damages

The assessment of damages remains, as it always has been, the most difficult part of a solicitor's work in actions for damages for personal injuries. Judges still vary in the amounts they award; doctors still have the disconcerting habit of being far more optimistic in the witness box than they are in their reports; and one's client in the box so often appears to be the complete hypochondriac instead of the genuine invalid he appeared in one's office. Advising a plaintiff when a payment into court has been made is guaranteed to worry anyone, and although counsel's opinion does remove the legal responsibility, it does not remove the worry that one's advice to refuse the amount paid in may subsequently be proved wrong.

The County Courts Act, 1955, increasing the jurisdiction of the county court to £400 and imposing penalties if less than that amount is recovered in the High Court, has made this business of assessing damages more important than ever. In a case of any complexity the natural desire is to have the case tried in the High Court because the hearing may well be more leisured and thorough, and one has the knowledge that once the case has started it will proceed to the end with no risk of lengthy part-heard adjournments. This desire, however, must be carefully weighed against the risk of recovering an amount within the jurisdiction of the county court and being awarded county court costs only. As most clients' ideas on damages are usually higher than one's own, there are usually brisk exchanges before the venue is finally decided upon. It is at times like these that the solicitor sighs for the gipsy's crystal.

Waiting for trial

Not so long ago litigants had to face a very long wait before their cases were heard, but recently the position in the High Court and at Assizes has improved enormously. These long waits, besides being irksome, placed litigants in great difficulties because the memories of their witnesses grew dimmer with each passing month, and in many cases real hardship was caused. To-day, however, one can anticipate a hearing within six months of setting down, and this is probably as good as anyone can reasonably expect. In the county court, however, the position in many places is getting worse and return dates are getting further and further away. Some lists are so full that part-heard cases are frequently resumed a month or more after the first hearing. This is not the fault of the court, of course, and the matter will remain unsatisfactory until some of the promised new county court judges have been appointed.

A job well done

Litigation remains, as it always has been, something of a gamble and until one can say with certainty that a witness will come up to his proof, that the plaintiff will not upset the judge, and that some totally unforeseen point will not be of vital importance, a solicitor serves his client best by restraining his desire to rush into court. Solicitors have the reputation of having only the desire to get their clients into court at much profit to themselves, but the undoubted fact is that most clients are far more litigious-minded than their advisers. However, when litigation is the only remedy, there is little doubt that the fighting of a case for a client gives the greatest satisfaction. There is nothing in our profession to compare with the thrill of hearing judgment pronounced in favour of our client, and the proud feeling we get of a job well done more than compensates for the vexations, the frustrations and the worries that go before trial. The feeling fades a little when one finally sees the taxed bill of costs, but flowers again in full glory on receipt of a grateful letter from the client. As for losers—well—clients are so unreasonable, aren't they?

Landlord and Tenant Notebook

Statutory Security of Tenure

"TENANT for terme of yeares" runs s. 58 of Coke's Institutes of the Lawes of England, published in 1628, "is, where a man letteth lands or tenements to another for terme of certaine yeares that is *accorded* between the lessor and the lessee . . ." (italics mine). There is no "commentarie" on this part of Littleton's statement.

If Sir Edward Coke had revisited us in 1857 he would have found that, except for some (to him) regrettable ascendancy gained by equity in the matter of forfeiture, the duration of a tenancy still depended on what had been agreed between landlord and tenant when it was granted. Parliament had not thought fit to interfere; indeed, what it had recently done had been to limit the amount of protection which equity could extend to tenants who did not pay rent (Common Law Procedure Act, 1852).

Were Coke to be vouchsafed a further visit in 1957, he would undoubtedly find that statutes enacted within the past century had changed the law beyond recognition. Three large classes of tenants had acquired the right to security *in invitum*.

Farms

Tenant farmers were the first to benefit. The introduction of a statutory right to compensation for improvements by the Agricultural Holdings Act, 1875, having resulted in wholesale contracting out, Parliament decided, when passing the Agricultural Holdings Act, 1883, to make any exclusion of the benefit by agreement void. The 1883 Act at the same time provided for a period of twelve months for notice to quit "where a half-year's notice . . . is by law necessary." The qualification provided a loophole, as *Barlow* v. *Teal* (1885), 15 Q.B.D. 501 (C.A.), soon showed. "Whatever may have been the intention of the legislature," said Coleridge, C.J., at first instance, "the provisions did not apply to a tenancy 'for one whole year from 6th April and so on from year to year until six months' notice shall have been given by one of the parties to the other in the usual way to determine the tenancy.'" Express stipulation could, therefore, anticipate statutory security; and the Act did not, of course, affect fixed-term grants at all. It was not till the Agricultural Holdings Act, 1923, was passed that contracting out of the twelve months' minimum notice provision was effectively forbidden.

The position is now dealt with by the Agricultural Holdings Act, 1948, conferring more security than ever. It may be said to do this in a somewhat roundabout and crafty way. Tenancies for less than year to year, and even licences to occupy as agricultural land, take effect as yearly tenancies unless dispensation be granted by the Minister of Agriculture, Fisheries and Food before they commence. No tenancy, not even a fixed-term tenancy, can be terminated (unless forfeited or surrendered) by less than twelve months' notice expiring with a year of the tenancy. Unless previously ministerially consented to, a landlord's notice can be forthwith challenged by a tenant's counter-notice, nullifying the notice to quit unless such ministerial consent be obtained, or unless given by reason of the happening of specified events. And when consent is required, it may be given only on a specified ground being proved—and need not be given even then (*R.* v. *Agricultural Land Tribunal for Eastern England, ex parte Grant* [1956] 1 W.L.R. 1240 (C.A.)).

Homes

While rent-control legislation has never been applied to all dwelling-houses, whatever the rateable value or rent; and while it was and is not intended to be permanent; and while its primary purpose is rent restriction, security of tenure being ancillary to that purpose—its effects have been very drastic. Security of tenure has come to be regarded as a normal incident of a tenancy of a dwelling-house: if a tenant stays on at the expiration of a fixed term, paying rent, and the house is controlled, it will be presumed that he does so in reliance on the protection conferred by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, and not as a tenant holding over from year to year (*Morris* v. *Jacobs* [1945] K.B. 577).

But in this case the means adopted by Parliament, if subtle, has been different. The legislature, as Bankes, L.J., put it in *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.), "in reference to claims for possession has secured its object by placing the fetter, not upon the landlord's action, but upon the action of the court." The term that was "accorded" between the lessor and the lessee may have come to an end; but the tenant may retain possession of his home as a "statutory tenant," enjoying a "status of irremovability" (Lush, J., in *Keeves* v. *Dean* [1924] 1 K.B. 685 (C.A.)). A "statutory tenancy," as Jenkins, L.J., said in *American Economic Laundry, Ltd.* v. *Little* [1951] 1 K.B. 400 (C.A.), is "a compendious expression to describe the right of a tenant of protected premises to remain in possession of those premises, notwithstanding the determination of his contractual interest."

And in this case, by virtue of what has conveniently been called "transmission on death," security is conferred on persons who have had no privity with the landlord or even his tenant. Coke would indeed be amazed to find that the joint effect of an interpretation section (Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*)) and a jurisdiction-limiting section (Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1)) entitle not merely a lessee and those deriving title from him, but a stranger, to occupy demised premises contrary to what had been accorded.

Business premises

By 1954 we may have got so used to statutory security of tenure that devious approach was no longer considered necessary. "A tenancy to which this Part of this Act applies shall not come to an end unless . . ." is the straightforward method of conferring security of tenure adopted by Pt. II

of the Landlord and Tenant Act, 1954, these words occurring in s. 24 (1); which, while its exact scope is still the subject of some speculation (how wide is the connotation of activity in s. 23 (2) ?), applies to a very large class of tenancies.

The enactment may contemplate that the tenant will seek a new tenancy; but it may suit him to leave things as they are. Even a weekly tenant is entitled to a six months' notice to terminate, and a notice to terminate will not give the landlord possession unless one of seven grounds be established.

Limits of security

Tenancies of agricultural holdings and business premises are subject to the ordinary law as regards forfeiture; apart from that, the right to security is, in their cases and that of rent-controlled premises, qualified.

A full exposition of "grounds for possession" would be out of place. They vary according to the type of tenancy, and in each case can be divided into facts relating to the needs of the landlord, facts relating to the behaviour of the tenant, and facts relating to neither.

The landlord of a farm may be able to give an effective notice if he requires possession of the land for a non-agricultural purpose; if the tenant is guilty of bad husbandry; if the tenant goes bankrupt. The landlord of controlled premises may succeed if he wants the premises as a residence; if the tenant fails to pay rent or to observe conditions of a statutory tenancy consistent with the provisions of the Acts (not, for instance, a condition to remain in the employ of a third party: *R.M.R. Housing Society, Ltd.* v. *Combs* [1951] 1 K.B. 486 (C.A.)), or is guilty of such torts as waste or nuisance; if prejudiced by acting on a notice to quit given by the tenant; if he can show that suitable alternative accommodation is or will be available for the tenant; if the tenant ceases to live in the house as his home. Protection of a business tenancy also depends on the tenant occupying the premises for the purposes of his business; alternative accommodation is again a ground for possession; the tenant's neglect of repairing or other obligations is another; and so is the landlord's firm and settled intention to demolish or reconstruct the premises, provided that he has not acquired the reversion within the last five years.

And, if the tenant wishes to terminate the relationship, he may find that it will take some time. The minimum twelve months' notice requirement of the Agricultural Holdings Act, 1948, applies to notices given by tenants: *Flather* v. *Hood* (1928), 72 Sol. J. 468; a statutory tenant whose tenancy followed a fixed term cannot determine his tenancy by less than three months' notice: Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1); *King's College, Cambridge,* v. *Kershman* (1948), 64 T.L.R. 547 (C.A.); and the same applies to a business-premises tenant after expiration of the contractual term, and in his case the notice must expire with a quarter-day (Landlord and Tenant Act, 1954, s. 27 (2)).

Death of tenant

When the need for security ceases in this way, curious differences ensue. The agricultural landlord may, if the tenant was the grantee, serve, within the next three months, an unchallengeable notice to quit: Agricultural Holdings Act, 1948, s. 24 (2) (*g*). The landlord of a statutory tenant may, as mentioned, find some member of the deceased's family entitled to a similar tenancy. This can happen once only: *Pain* v. *Cobb* (1931), 146 L.T. 13; but if the deceased was still a contractual tenant, the landlord may in special circumstances find a "suspended" tenancy behind the "transmitted" tenancy (*Moodie* v. *Hosegood* [1952] A.C. 61). The effect of the death of a business tenant has not yet been demonstrated, but there may be cases in which a landlord will be able to exploit s. 24 (3) (*b*) of the Landlord and Tenant Act, 1954, by at once giving a notice to quit, while the premises are not occupied for the purposes of the tenant's business.

Self-help when no security

As Coke will have found all this very depressing, I will close by recalling an incident showing that the common law could still triumph in the last 100 years. Not, of course, that Coke would be shocked by long tenancies, provided there was "accord"; if "King Lear" was not, or was not to his knowledge written by Bacon, Coke may have attended one of the first performances and not have been perturbed on hearing: "I have been your tenant, and your father's tenant, these fourscore years" (Act IV, Sc. 1), uttered by one of the characters.

The incident occurred on 2nd August, 1918, and not far from Coke's old home. Five men entered a cottage, led or gently pushed one of its occupants out, he holding his baby; his wife was then carried out on a chair which she refused to leave. Husband and wife (not baby) sued those who had instructed the five men for trespass, assault and battery; on appeal it was held that the answer that the plaintiffs had been wrongfully in occupation afforded the defendants a complete defence, whatever might be the effect of the Statute of Forcible Entry, 1381, on the position at criminal law (*Hemmings and Wife* v. *Stoke Poges Golf Club, Ltd., and Another* [1920] 1 K.B. 720 (C.A.)). True, there had been no tenancy in that case, but the judgments and the overruling of older decisions (one pre-1857, others later) show that even in 1957, in the absence of statutory security of tenure, neither law nor equity need deter a landlord from resorting to self-help; Scrutton, L.J.'s judgment included this passage: "It seems that when the grievance complained of is the removal by no more force than is necessary of a trespasser and his property from premises which the landlord has a right to enter for that purpose, the justification covers not only the entry but the forcible expulsion which is the object of the entry, and which makes the entry a forcible one."

R. B.

The Solicitors' Journal, 3rd January, 1857

The Solicitors' Journal discussed some remarks made at Birmingham Quarter Sessions by Mr. M. D. Hill, the Recorder. "He reminds us that our prisons, formerly abodes of pestilence, had become far more comfortable than the dwellings of many honest labourers and that transportation was well known often to lead to high prosperity . . . We ought to aim at depriving our criminals of the power of again offending until we have some proof that their habits and dispositions have been really and effectively changed. And if the discipline of the gaol fails to produce this effect, then Mr. Hill declares it to be unquestionably right that seclusion should continue even for life. It is to be feared, however, that upon this most difficult of all questions our new adviser helps us as little as those we have heard before. Who is to judge when that real change of heart has taken place which will fit the convict to return to the society he has wronged? Chaplains undertook the task and humanitarians applauded the attempt but now the cry is that hypocrisy has been too much for zeal and charity. Shall we shut up all our criminals for life or, if not, whom shall we trust to decide when they shall be set at large?"

Here and There

"RICHARD ROE"

LAWYERS AWAKE

A LADY, who said that solicitors are "one of the laziest sections of the community," must at this moment be picturing them as sinking blissfully into their centuries-old torpor, for after a remarkably vigorous incursion into the realm of litigation she has just been debarred from further activity in that direction under "vexatious litigant" proceedings. In the past eight years she has brought no less than twenty-seven actions in the superior courts of Scotland and England—twenty in Scotland until the Court of Session was closed to her and seven in England when she brought her foray south across the Border. Had she been successful she would have been £45,000 the richer. Her charge of sloth recalls the impatience of that most original lady novelist Mrs. Amanda Ros, who, exasperated by an interminable law suit over a lime kiln which had been bequeathed to her and her husband, made a practice of driving each market day to the offices of her solicitors. There she would produce a toy trumpet, blow a couple of derisive blasts and unfurl a banner declaring that she was being shamefully victimised. All the same, sloth is not the common-form accusation against solicitors. Covetousness, rather, is the standard barbed shaft for those who would hunt and harpoon them. Then, as reserve weapons, there are negligence, speculation, gambling or riotous living on clients' funds, legal blackmail, champerty and maintenance. But the idle solicitor has never been the standing joke which, say, the briefless barrister has always been. By some magic inherent in the Inns of Court the *dilettante* barrister managed to survive from generation to generation and, even in this iron age of ours, is not wholly extinct. But the solicitor, the legal man of business—if he is slothful, he very soon ceases to exist.

NINETEENTH-CENTURY TYPES

THAT was so in the past no less than in our own day. Looking back a hundred years from the vantage point of the centenary of the SOLICITORS' JOURNAL, one sees, reflected in literature and, on the whole, unfriendly literature at that, every type of solicitor, but never a sluggard. Take Samuel Warren's "Ten Thousand a Year," that monumental satire on legal chicanery published in 1841. The firm of solicitors which he created was Messrs. Quirk, Gammon & Snap of Saffron Hill, who were backing the disreputable claimant to a great fortune. Their fashionably dressed clerk opened the door to him and they received him in an inner office beyond a green baize door, all three sitting at a large table by the strong but circumscribed light of two shaded candlesticks. Mr. Quirk, the senior partner, was "a short, stout elderly gentleman dressed in black with a shining bald head and white hair, and sharp black eyes, and who looked very earnestly, nay, with even a kind of dismay, at him." Mr. Gammon "was of a slight and gentlemanly figure, above the average height. His countenance was very striking. He was dressed with simplicity, somewhat carelessly perhaps." He was in his middle thirties, "of most gentlemanly person and bearing and at once acute, cautious and insinuating." Mr. Snap "was the junior partner, having been recently promoted after ten years' service in the office as managing clerk. He was about thirty, particularly well dressed, slight, active and with a face like a terrier; so hard and sharp and wiry." The book is the story of the litigation they promoted and the mischief they wrought with so much professional skill and decorum. Dickens loved to draw lawyers and describe their offices, and in "The Pickwick Papers" the two contrasting types are Messrs. Dodson and Fogg, practising dingily and shadily in Freeman's Court, Cornhill, and little Mr. Parker of Gray's Inn, Mr. Pickwick's highly respectable legal adviser. The four clerks in Freeman's Court worked in a dark, mouldy, earthy-smelling room with a high wainscotted partition to screen them. Dodson, you remember, was "a plump, portly, stern-looking man with a loud voice." Fogg was "an elderly pimply-faced, vegetable-diet sort of a man in a black coat, dark mixture trousers and small black gaiters, who seemed to have as much thought or sentiment as his desk." They have passed into a proverb as the mirror of all sharp, speculative solicitors addicted to legal blackmail. Very different were they from bustling little Mr. Parker, full of the correctness befitting a professional man, but not without a certain regard for the expert skill of his opponents—"very smart fellows, very smart indeed." In "Bleak House" we are introduced to yet another type of solicitor of the period, Mr. Tulkinghorn of Lincoln's Inn Fields, repository of the deepest secrets of the noblest families, his headquarters a set of chambers in a large house, formerly a house of state, where he works among deed boxes full of transcendent names, "an oyster of the old school which nobody can open." He is "rusty, out of date, withdrawing from attention, able to afford it." He has no staff but a middle-aged man, a little out at elbows, who sits in a high pew in the hall. His drafts are drawn in the Temple on mysterious instructions; fair copies are made at the law stationer's, expense being no consideration. Then, of course, in "David Copperfield," there is the solid respectable country solicitor, Mr. Wickfield, and the villainous, scheming, aspiring clerk, Uriah Heep. Seen in the slightly distorting mirror of the novelist, here were living specimens of the profession a century ago.

TWO SELF-PORTRAITS

HALF-WAY between their time and our own were the lawyers depicted by John Galsworthy in the last great confident days of the English middle class. In our own day, although solicitors abound in countless works of fiction, the modern solicitor has been best portrayed in two remarkable books by members of his own profession. Solicitors have, of course,

written their autobiographies in the past. But these are not exactly autobiographies. The first is, of course, "Confessions of an Un-Common Attorney" by the late Reginald Hine, of Hitchin, and the other, G. A. L. Burgeon's "This Ever Diverse Pair." Neither of the authors is in any sense a mere lawyer. The former was a local historian, an antiquarian, a book collector and a man of letters. The latter appears by turns metaphysician, philosopher, poet, scholar. Both, being articulate beyond the composition of legal drafts and solicitors' letters, can express the problems and paradoxes inherent in the practice of their profession in the modern world. "This Ever Diverse Pair" expresses the never-ending conflict between two characters in one man—Burden, the diligent man of business, and Burgeon, the man of sensibility. Hine was just as much divided within himself. But as, in a sense, they had four pairs of eyes, instead of only two, one sees, through them, all the more clearly their clients and their offices.

FROM BRANCH TO BRANCH

To the old days when Themis haughtily treated the solicitor sometimes as a superior servant, sometimes as an inferior servant, but always as a menial, belongs the recollection lately related in a book by a North Country solicitor who passed his final examination in 1883. He was summoned to attend before the Master of the Rolls in his court to take the Oath of Fidelity, make the prescribed declarations and sign the Roll. With two others he took his place at the back of the court where a case was in progress. The usher approached them and, in a whisper, bade them repeat the oath after him, and they, thinking that the Master of Rolls should hear what they said, repeated it aloud, whereupon the usher threw up his arms in horror, hissing tensely: "Hush, hush, his lordship will hear you." Throughout the past century the status of the solicitor has been in process of consolidation. The City of London Solicitors have been established as a Livery Company. The Lord Mayor of London, Sir Cullum Welch, is a solicitor. The transition from one branch of the legal profession to the other is but a step. The Lord Chief Justice is the son of a solicitor, as are many of his brethren on the Bench. His predecessor, Lord Russell of Killowen, was a solicitor before he was a member of the Bar. Several of the High Court judges are former solicitors. Perhaps the most astonishing example of this species of professional versatility is provided by the career of Sir James O'Connor, who, having been admitted a solicitor in Ireland in 1894, was called to the Irish Bar in 1900 and took silk in 1908. He became Solicitor-General in 1914, Attorney-General in 1917, a Chancery judge in April, 1918, and a Lord Justice in the Court of Appeal in November, 1918. He resigned in 1924 on the establishment of the Irish Free State, was called to the Bar at the Middle Temple, took silk and was knighted in 1925. In 1929, he applied to be disbarred and dispatented, returned to Ireland and sought readmission as a solicitor. This was granted on condition that he should not exercise the right of audience in any court. He died in 1931, having tested every experience which the law has to offer and finally made his end in his beginning.

Reviews

The Common Law Library. Number 6: Charlesworth on Negligence. Third Edition. By J. CHARLESWORTH, LL.D., of Lincoln's Inn, a Judge of County Courts. 1956. London: Sweet & Maxwell, Ltd. £4 4s. net.

The publishers' valiant effort to beautify our bookshelves is continued in this new accession to the Common Law Library. The work itself had already achieved a reputation well fitting it to be ranged alongside Clerk and Lindsell and the other volumes in the series.

In this edition Judge Charlesworth has put himself to some substantial rewriting, not only in regard to the development of the law of master and servant, which he particularly notices in his preface, but also in careful explanations of modern cases on other parts of his subject. It is the basing of the text on decided examples of the application of principles to present-day conditions which after all distinguishes a practitioner's book from works intended for students and academicians, and on this score *Charlesworth* has no comparison to fear. The long-neglected case of *Thomson* v. *Crewin* is put in its proper place in the light of other decisions which have not undergone the exciting process, perhaps disturbing to rational thought, of "discovery" twelve years late.

The only bone we would respectfully pick with the learned author concerns the passage on pp. 609-10 founded on *Howell* v. *Young* and said to be supported by *Archer* v. *Catton*. We still think (and our reasons were given at 98 SOL. J. 447) that it is incorrect to say that time begins to run from an act of negligence because it is then that the damage is caused. It depends on the circumstances whether the damage accrues at the same time as the negligent act or not until later. But surely as regards tort (and the book deals only incidentally with contractual negligence) a cause of action does not accrue until there *is* damage. A correspondent at 98 SOL. J. 507 cited *Paine* v. *Colne Valley Electricity Supply Co.* [1938] 4 All E.R. 803 in support of our views.

One of the most interesting chapters is that in which actions against professional and other skilled persons are considered. Here the citation of cases is particularly full and helpful.

Pension Schemes and Retirement Benefits. By GORDON A. HOSKING, F.I.A., F.S.S., Member of the Institute of Taxation. 1956. London: Sweet & Maxwell, Ltd. £2 2s. net.

There is no doubt that the subject-matter is "fashionable" these days, and Mr. Hosking has produced a very good and very useful book. Although Mr. Hosking knows and expounds very clearly the relevant parts of the Income Tax Act, 1952, it does not purport to be a legal text-book but rather a practical guide for anyone thinking of establishing a pension scheme or for anyone called upon to advise a client who is thinking of doing so. Its scope can best be indicated by a list of some of the matters which are dealt with. The benefits to be provided—major benefits in the form of pensions and minor benefits such as those payable on death before retirement. The different methods available—private funds, group life and endowment schemes, etc.—and the relative merits of each. Contributory and non-contributory schemes and their respective merits. The effect of the income tax provisions. The principles of investment as applied to pension funds. An extremely interesting explanation of the elementary principles of actuarial valuation of a fund. The inter-action of private schemes and the National Insurance benefits. Finally a chapter on American practice. The appendices contain, *inter alia*, the relevant statutory provisions of the Income Tax Act, 1952, Finance Act, 1956, and the Superannuation Funds (Validation) Act, 1927, and the provisions of various Statutory Instruments made thereunder.

The book is very helpful indeed and can be recommended to anyone at all concerned with the subject.

Notes of Cases

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

BILL OF LADING: STRIKE DEVIATION CLAUSE: DISCHARGE AT HAMBURG INSTEAD OF LONDON

G. H. Renton & Co., Ltd. *v.* Palmyra Trading Corporation of Panama

Viscount Kilmuir, L.C., Lord Morton of Henryton, Lord Tucker, Lord Cohen and Lord Somervell of Harrow. 5th December, 1956

Appeal from the Court of Appeal ([1956] 1 Q.B. 462; 100 Sol. J. 53).

The Hague Rules, as incorporated in the (Canadian) Water Carriage of Goods Act, 1936, provide by art. III, r. 2: "Subject to the provisions of art. IV, the carrier shall properly and carefully load, . . . carry . . . and discharge the goods carried." By r. 8: "Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these rules, shall be null and void and of no effect." By art. IV, r. 4: "Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom." Timber was shipped at Canadian ports under bills of lading "for carriage to London or Hull or so near thereunto as the vessel may safely get. . . ." They incorporated the Hague Rules as enacted by the (Canadian) Water Carriage of Goods Act, 1936. The bills of lading in the present case provided, by cl. 14 (*c*) of the printed conditions, that "should it appear that . . . strikes . . . would prevent the vessel from . . . entering the port of discharge or there discharging in the usual manner and leaving again . . . safely and without delay, the master may discharge the cargo at port of loading or any other safe and convenient port. . . ." By cl. 14 (*f*) "the discharge of any cargo under the provisions of this clause shall be deemed due fulfilment of the contract." The *Caspiana* left Nanaimo, British Columbia, on 3rd September, 1954. While she was on passage a strike broke out in the port of London and later in the port of Hull and the shipowners (the respondents) caused the ship to proceed to Hamburg and there discharge the timber. They took no steps to forward it to London at their own expense, but made it available to the appellants, the indorsees and holders of the bills of lading, at Hamburg on payment of full freight. The appellants claimed damages for breach of contract, but the respondents contended that by discharging at Hamburg they had effected due delivery under the bills of lading. McNair, J., gave judgment for the cargo owners, holding that, while under cl. 14 (*c*) the shipowners were justified in discharging the cargo at Hamburg with a view to forwarding it to London at their own expense, cl. 14 (*f*) which provided that delivery at Hamburg should be deemed due delivery was so repugnant to the primary and unqualified promise to deliver in London that it must be rejected. He also held that under the Hague Rules the shipowners could not claim to effect due delivery in Hamburg. The Court of Appeal having reversed this decision, the cargo owners appealed to the House of Lords.

Viscount Kilmuir, L.C., said that the appellants contended (1) that the respondents' action constituted a breach of contract on the true construction of the bill of lading; and (2) that, in relation to the bills of lading to which the Hague Rules applied, the provisions on which the respondents relied as excusing them from liability for the final discharge at Hamburg were rendered null and void by the operation of the Rules. On the first contention it was submitted that in this case the main object and intent of the contract was the carriage to London or Hull and that cl. 14 (*c*) and (*f*) did not provide for alternative ports of discharge, but sought to exonerate the respondents from liability for failure to achieve the main object. It was submitted that, while there might be nothing inconsistent with this object in a provision permitting discharge at Hamburg and subsequent forwarding to the named ports by the respondents, cl. 14 (*f*) purported to provide that delivery at Hamburg should be deemed due fulfilment of the contract and thus the provisions of the clause were repugnant to the purpose of the contract. One could not improve on what Jenkins, L.J., had said in the Court of Appeal ([1956] 1 Q.B., at p. 502): "It seems to me that there is a material difference between a deviation clause purporting to enable the shipowners to delay indefinitely the performance of the contract voyage simply because they choose to do so, and provisions such as those contained in cl. 14 (*c*) and (*f*) in the present case, which are applicable and operative only in the event of the occurrence of certain specified emergencies. The distinction is between a power given to one of the parties which, if construed literally, would in effect enable that party to nullify the contract at will, and a special provision stating what the rights and obligations of the parties are to be in the event of obstacles beyond the control of either arising to prevent or impede the performance of the contract in accordance with its primary terms." The appellants argued that the obstacles must be of such a kind as to amount to a frustration; they must prevent and not merely impede the performance of the contract. His lordship could not agree. It was more reasonable to provide for such an emergency in advance than to leave it to prolonged post-mortem speculation. The first contention must be rejected. On the second contention that cl. 14 (*c*) and (*f*) were struck at by art. III, rr. 2 and 8, of the Hague Rules the appellants argued that r. 2 involved discharging at a "proper" port and that Hamburg was not such a port. But "proper" had not a geographical significance. Here one could not give a strained construction to a simple word. It was also argued that "carry" in r. 2 meant transport from one place to another and that, as the clause here in question permitted discharge at the port of loading, that clause must go. That meaning of "carry" could not be accepted nor could the implication that it was impossible for the parties to provide for discharge in the port of loading in any circumstances. The submission that cl. 14 allowed a deviation not permitted by r. 4 must also fail. The appeal should be dismissed.

The other noble and learned lords agreed in dismissing the appeal. Appeal dismissed.

Appearances: *Alan Mocatta*, Q.C., and *Robert MacCrindle* (*William A. Crump & Son*); *Eustace Roskill*, Q.C., *The Hon. T. G. Roche*, Q.C., and *Andrew Bateson* (*Richards, Butler & Co.*).

[Reported by F. Cowper, Esq., Barrister-at-Law] [2 W.L.R. 45

Court of Appeal

CONTRACT FOR SALE OF LAND: PURCHASER ENTERING INTO POSSESSION AFTER PAYING DEPOSIT: LACHES: SPECIFIC PERFORMANCE ORDERED AFTER TEN YEARS

Williams *v.* Greatrex

Denning, Hodson and Morris, L.JJ. 29th October, 1956

Appeal from Cardiff and Barry County Court.

In May, 1946, a landowner agreed to sell to a builder thirty-four building plots for houses. Clause 3 of the agreement provided: "On notice to the vendor of the purchaser's intention to purchase any of the said plots and payment of a deposit of 10 per cent. of the purchase price in respect thereof the vendor will allow the

purchaser to enter upon the said plot for the purpose of erecting any buildings thereon and on payment of the balance of the purchase money will execute a proper conveyance to the purchaser of the said plot but so that the purchase of all the said thirty-four plots shall be completed within two years from the date hereof."

In October, 1946, the purchaser paid deposits on plots 3 and 4 and was given a receipt by the solicitors then acting for both parties. He then entered on the land and did much work on and in connection with it, including the construction of a solid boundary fence around the plots. Unknown to the purchaser, the vendor never cashed the cheque for the amount of the deposits. In April, 1947, the vendor came on to the land and in abusive terms ordered the purchaser off. The purchaser thereafter stopped the building work, partly because he had failed to obtain the building licences then necessary and partly because of the vendor's behaviour in this and other respects; and he took no step to require completion of the contract until the present proceedings, though in 1948 he put up a garage and shed on the land and in 1955 built a road to serve the plots. In December, 1955, when building licences were no longer required, a third party entered on the land to carry out work on the basis of a purported sale of the land to him by the vendor. In 1956 the purchaser brought an action for specific performance of the agreement of May, 1946. The county court judge made an order for specific performance of the agreement. The vendor appealed.

DENNING, L.J., said that when the cheque for the deposit on plots 3 and 4 was received a sub-contract came into being in respect of those plots which was separate from the main contract and binding on the vendor. His lordship could not agree with the submission for the vendor that this was a commercial contract of which the time for completion was of the essence. It was a contract for the purchase of land, and the agreed two-year period for completion was only a target. Either side could have given reasonable notice requiring the other to complete. Neither had done so, and therefore time was not by itself a bar to an action for specific performance. On the question whether there had been such laches as to disentitle the purchaser from obtaining specific performance, his lordship's view was that when the deposit was paid there was a contract by which the vendor let the purchaser into the land to erect the buildings. The purported repudiation by the vendor in April, 1947, was entirely inoperative, and the purchaser remained in possession under a contractual licence and had an equity to remain there. He also had an equitable interest in the land and so long as he was in possession he did not lose his rights simply by not proceeding at once for specific performance. All that was needed was for the legal title to be perfected, and in such a case laches or delay was not a bar. On the evidence there was sufficient acquiescence by the vendor in the purchaser's possession, for he did nothing to see that the fence was removed or to take down the garage. Nor was there evidence that the purchaser had abandoned the contract. He was put in such a difficult position by the vendor's conduct that it was understandable that he did not feel it wise to take legal proceedings at an earlier stage. He only brought them when they were forced upon him by the resale by the vendor. His lordship agreed with the county court judge and would dismiss the appeal.

HODSON, L.J., and MORRIS, L.J., delivered concurring judgments.

APPEARANCES: *D. Meurig Evans* and *David Howells* (*Rhys Roberts & Co.*, for *S. Garelick & Co.*, Cardiff); *David Pennant* (*Myer Cohen & Co.*, Cardiff).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 31**

RESTRAINT OF TRADE: SALESMAN IN CREDIT DRAPERY TRADE: UNREASONABLE RESTRICTIVE COVENANT

M. & S. Drapers (a firm) *v.* Reynolds

Denning, Hodson and Morris, L.JJ. 8th November, 1956

Appeal from Newcastle upon Tyne County Court.

In March, 1953, a collector-salesman entered the employment of a firm of credit drapers, bringing with him a connection with customers acquired in previous employments. On 11th August, 1955, the salesman and the firm entered into a written agreement determinable by two weeks' notice on either side and providing for the salesman a weekly wage of £10. Clause 8 provided: "For a period of five years following the determination of this agreement the servant shall not . . . sell or canvass or solicit orders . . . by way of the business of a credit draper from any person whose name shall have been inscribed on the books of the firm as a customer during the three years immediately preceding such determination upon whom the servant has called in the course of his duties for the firm." On 17th May, 1956, the salesman left the firm's employment, and thereafter sold goods by way of the business of a credit draper to persons whose names were on the firm's books as customers during the three years before he left. The firm as covenantees sought to enforce the covenant against him, accepting the onus of showing that the restraint, which they admitted was *prima facie* unreasonably in restraint of trade, was reasonable.

HODSON, L.J., reading the first reserved judgment, said that since the House of Lords decisions in *Mason* v. *Provident Clothing Co., Ltd.* [1913] A.C. 724 and *Herbert Morris, Ltd.* v. *Saxelby* [1916] 1 A.C. 688, the time of the restriction had to be taken into account in considering whether it was reasonable. In the present case there was the added circumstance that a large proportion of the customers covered by the covenant were in fact composed of persons who had formed the salesman's connection before he entered the firm's service. The first task of the court in these cases was to ascertain the nature of the master's business and the servant's employment. Considering all the circumstances of this case, his lordship agreed with the county court judge who recognised the proprietary right which the firm was entitled to protect, but held that this restriction for as long as five years for a man in the defendant's position was unreasonable. The appeal should be dismissed.

MORRIS, L.J., concurring, said that in a sphere where competition was normally free and where successful selling must to some extent depend on the personal abilities of particular salesmen, a period of five years' banishment from particular doorsteps seemed to him to be of wholly unwarranted duration. Moreover, it was not reasonable here to prevent the defendant from calling on those who had formed his own connection and in regard to whom his knowledge was not acquired during his service with or at the expense of the employers.

DENNING, L.J., also concurring, said that the salesman's goodwill with "his customers" belonged to him and could not reasonably be taken from him by a covenant of this kind, which was an unreasonable restraint of trade. Appeal dismissed.

APPEARANCES: *Peter Foster* (*Smith & Hudson*, for *Waller and Houseman*, Newcastle upon Tyne); *R. J. Parker* (*Doyle, Devonshire & Co.*, for *T. H. Campbell Wardlaw*, Newcastle upon Tyne).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 9**

Chancery Division

INCOME TAX: COVENANT IN LEASE COMPELLING TENANTS TO PUT PROPERTY IN REPAIR: NOT DEDUCTIBLE EXPENDITURE

Jackson (Inspector of Taxes) *v.* Laskers Home Furnishers, Ltd.

Danckwerts, J. 13th November, 1956

Appeal from the Commissioners for the General Purposes of the Income Tax.

A lease of business premises for fourteen years contained a covenant under which the tenants were obliged to put the premises in repair, and thereafter to keep them in repair. The premises had been unoccupied for a number of years and were unfit for occupation. The tenants in compliance with the covenant spent £2,295 in putting the premises into repair. The rent payable was a peppercorn rent for the first year, £700 a year for the next six years, and £1,000 a year for the last seven years. The tenants claimed that the sum of £2,295 was a deductible expenditure under Sched. D.

DANCKWERTS, J., after reviewing the authorities, said that he was much assisted by the observations of Lord Greene, M.R., in *Henrikson* v. *Grafton Hotel, Ltd.* [1942] 2 K.B. 184, where he said (at p. 193): "Capital improvements are often made under a covenant in a lease. I have never heard it suggested that the cost of making them can be deducted by the lessee in computing

his profits for income tax purposes . . . It frequently happens in income tax cases that the same result in a business sense can be secured by two different legal transactions, one of which may attract tax and the other not. This is no justification for saying that a taxpayer who has adopted the method which attracts tax is to be treated as though he had chosen the method which does not, or vice versa." In the present case the landlords might have agreed to a lease of fourteen years at a rent of £1,000 a year and the tenants would, he supposed, have been entitled to deduct £1,000 rent in each year, but a different plan was adopted which, as it turned out, might have unfortunate results for the tenants. It seemed to him that in consideration of the deductions of rent the tenants had agreed to do work which otherwise the landlords might have been required to do, and they did work which represented a capital expenditure required on the acquisition of the premises by them for the purposes of their trade. It was work and expenditure of a capital nature, being in respect of the accumulation of repairs or alterations (of a small nature, perhaps, but none the less alterations) of the premises to suit their business. It had, therefore, nothing in common with the current expenditure on repairs of the property which called to be made normally under a lease. Consequently, the only possible and reasonable conclusion on the facts in this case was that this work and expenditure was of a capital nature. Appeal allowed.

APPEARANCES: *F. N. Bucher*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *N. E. Mustoe*, Q.C., and *Peter Whitworth* (*Clutton, Moore & Lavington*, for *Ralph C. Yablon, Temple-Milnes & Carr*, Bradford).

(Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law) [1 W.L.R. 69

VENDOR AND PURCHASER: LAW SOCIETY'S CONDITIONS OF SALE: WHETHER MISSTATEMENT AS TO AREA SUBSTANTIAL AND PREJUDICIAL

Watson *v.* Burton

Wynn Parry, J. 20th November, 1956

Action.

By an agreement in writing dated 14th September, 1954, a purchaser agreed to purchase from a vendor certain freehold premises. The premises were sold subject to The Law Society's Conditions of Sale, 1953, so far as they were not varied by special conditions contained therein, and it was provided by condition 35 that, if any error, omission or misstatement was found in the contract, the purchaser should not be entitled to be discharged from his purchase, nor should the vendor nor any purchaser be allowed compensation in respect thereof; provided that nothing in the condition should entitle the vendor to compel the purchaser to accept or the purchaser to compel the vendor to convey property which differed substantially from the property agreed to be sold and purchased, if the purchaser or the vendor would respectively be prejudiced by reason of such difference. The property, which was stated in the particulars to amount to approximately 3,920 square yards, was found to contain approximately only 2,360 square yards. The purchaser having failed to complete the purchase, the vendor commenced an action for specific performance and the purchaser counter-claimed for rescission of the contract. In the period of about two months which elapsed between the discovery of the deficiency in the area and the purchaser's repudiation of the contract, the purchaser paid a deposit, showed several possible sub-purchasers over the site, and carried out some small repairs.

WYNN PARRY, J., said that the first question was whether the statement as to the area formed part of the contract. The particulars included some "puffs," but it was difficult to reject this particular as a mere false description. In *Whittemore* v. *Whittemore* (1869), L.R. 8 Eq. 603, a similar misstatement was held to be part of the contract, and that view had never been criticised. The next question was whether the property which could be conveyed differed materially from the property agreed to be sold. The cases showed that the question whether the difference was substantial was a matter of fact for the court to decide in each case. In *Flight* v. *Booth* (1834), 1 Bing. N.C. 370, it was said that if it might reasonably be supposed that, but for the misdescription, the purchaser would not have purchased at all, the contract was avoided, as in the circumstances the purchaser might be considered as not having purchased the thing which was really the subject of sale. Bearing in mind that the area had been overstated by nearly 40 per cent., and that the defendant had relied on the statement, it must be regarded as a substantial misstatement for the purposes of condition 35. The next question was whether the purchaser had been prejudiced. He had relied on the statement, and intended to re-sell, and if he had known the actual area would not have bid so much. Under the circumstances he had established that he had been prejudiced. The plaintiff had contended that the defendant had by his conduct waived any right he might have to rescind. But on the defendant's evidence, which could not be rejected, his conduct was quite consistent with trying to negotiate a way out of the difficulty which had arisen and was not really consistent with a fixed intention to affirm the contract. Finally, the plaintiff expressed willingness to waive that part of condition 35 which excluded the allowance of any compensation. But having regard to *Rutherford* v. *Acton-Adams* [1915] A.C. 866, such a course could only be taken with the purchaser's consent, and the defendant was not willing to accept compensation. There must be judgment for the defendant on both claim and counter-claim. Judgment for the defendant.

APPEARANCES: *H. E. Francis* (*Peacock & Goddard*, for *R. W. Beswick*, Hanley); *G. T. Hesketh* (*Doyle, Devonshire & Co.*, for *Moxon's*, Hanley).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 19

Queen's Bench Division

RAILWAY: STATUTORY DUTY: MEN KILLED WHILE TIGHTENING BOLTS ON PERMANENT WAY

Reilly *v.* British Transport Commission

Woods *v.* Same

Donovan, J. 9th November, 1956

Actions.

The Prevention of Accident Rules, 1902, provide by r. 9: "With the object of protecting men working singly or in gangs on or near lines of railway in use for traffic for the purpose of relaying or repairing the permanent way of such lines, the railway companies shall . . . in all cases where any danger is likely to arise, provide persons or apparatus for the purpose of maintaining a good look-out or for giving warning against any train or engine approaching such men . . ." *R* and *P* were lengthmen employed by the defendants. On 13th May, 1954, they were, in the course of their employment, tightening crossing bolts on a main railway line as they had been instructed to do, and while so doing they discovered a loose nose bolt which required tightening. It was the accepted practice that if, in the course of tightening crossing bolts, a nose bolt was found to be loose, the men were expected to tighten that also. The tightening of a nose bolt required the use of a "T" spanner which needed two men to operate it, and while both men were so operating it they were struck and killed by an express train. No look-out man had been provided by the defendants. In actions under the Fatal Accidents Acts, 1846 to 1908, the plaintiffs, the widows of the two deceased men, alleged, *inter alia*, breach of r. 9.

DONOVAN, J., said that the defendants contended that the deceased were not "repairing the permanent way" within the meaning of r. 9, so that there was no duty to provide a look-out man, and that the work of tightening bolts was more properly maintenance or adjustment. But the terms "repair," "maintenance" and "adjustment" were not mutually exclusive. The defendants said that "repairing" should be given the special meaning which would be attributed to it by railwaymen; but words should receive their ordinary meaning unless the contrary appeared, and there was no context in r. 9 to restrict its meaning. In *L. & N.E. Railway Co.* v. *Berriman* [1946] A.C. 278, Lord Jowett, L.C., had thought that the tightening of a nut would be conceded as a work of repair. The function of the bolts was to hold the points together; if they became slack and were tightened, the line was restored to its full duty; to put right such a defect would be reasonably and properly called a "repair." The next point was whether, in the circumstances, danger was "likely to arise." There could be no obligation to provide a look-out every time anybody worked on the line, singly or otherwise. Danger was not constituted by the mere presence of moving trains; there must be a real risk of accident; danger must be

"likely" to arise. In the case of a single linesman sent to inspect the line and tighten up fishplates, there would be no danger in ordinary weather, still less with two linesmen. But the deceased had been required to operate a "T" spanner together; when so doing their attention was diverted to the job, and they probably obscured one another's view. That being so, there was a likelihood of danger, and there had been a breach of r. 9. As to contributory negligence, the deceased had ignored a signal and taken no notice of the whistling of the oncoming train; their responsibility would be assessed at one-third. Judgment for the plaintiffs.

APPEARANCES: *N. R. Fox-Andrews*, Q.C., and *W. G. Wingate* (*Pattinson & Brewer*); *R. Marven Everett*, Q.C., and *F. H. Lawton* (*M. H. B. Gilmour*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 76

Court of Chancery of the County Palatine of Lancaster

TITLE: DEED OF GIFT WITHIN FIVE YEARS: INSURANCE INDEMNITY AGAINST ESTATE DUTY: RESCISSION AFTER REASONABLE TIME

Manning *v.* Turner and Another

Sir Leonard Stone, V.-C. 9th July, 1956

Action.

The plaintiff, having at an auction sale held on 14th October, 1954, been declared the purchaser of a house for the sum of £500, paid a deposit of £50 and signed a printed form of contract which incorporated The Law Society's General Conditions of Sale, 1934 (1949 Revision), so far as they were not specially varied. The defendants sold the house as beneficial owners and the abstract of title disclosed that their title depended upon a deed of gift to themselves dated 16th October, 1953, by a donor who was still living. On 26th October, 1954, the plaintiff's solicitors, by requisition, required the defendants to provide at their own expense an insurance policy in favour of the plaintiff which would indemnify her against the charge for estate duty on the property which would arise in the event of the death of the donor within five years of the date of the deed of gift. On 8th November, 1954, the plaintiff's solicitors informed the defendants' solicitors that the plaintiff was not prepared to accept a covenant for indemnity and, unless an insurance indemnity were provided, she required the return of the deposit she had paid. On 9th December, 1954, the defendants' solicitors wrote to the plaintiff's solicitors stating, without prejudice, that they had instructions to make inquiries of an insurance company in the matter. Having received no further communication from the defendants' solicitors, the plaintiff's solicitors by letter dated 21st December, 1954, rescinded the contract on behalf of the plaintiff. Subsequently the defendants offered an indemnity policy and served notice to complete, but the plaintiff contended that she was entitled to rescind the contract and that, having done so, she was entitled to the return of the deposit which she had paid. In the action the plaintiff claimed the return of her deposit and damages. The defendants counter-claimed for specific performance on the basis that they would provide an indemnity policy.

Sir LEONARD STONE, V.-C., said that the first question was whether the plaintiff was entitled to refuse to proceed without proper insurance cover. The answer to that question, on which there appeared to be no authority, must be in the affirmative. The risk of having to pay estate duty was not remote or shadowy, nor would a personal covenant of indemnity be satisfactory. The court would not force such a title on an unwilling purchaser in a specific performance action, and that was the test. The second question was whether the repudiation on 21st December was valid. Reference had been made to *Murrell* v. *Goodyear* (1860), 1 De G. F. & J. 432; *Halkett* v. *Earl of Dudley* [1907] 1 Ch. 590 and *Elliott* (*Builders*), *Ltd.* v. *Pierson* [1948] Ch. 452. Those cases laid down two principles: first, that the purchaser, if he wished to repudiate on the ground of defect in the title, must do so as soon as he discovered it; and, second, that if he entered into negotiations regarding the removal of the defect, he must allow the vendor a reasonable time to remove it; what time was "reasonable" depended on the circumstances. The issue of such policies was an everyday matter, the only question having to be worked out being the amount of the premium. The plaintiff had from first to last insisted on a policy; that was quite unequivocal, and was not the same thing as entering into negotiations to adjust the defect in such a way as to amount to a waiver of the right to repudiate. It would have been better if the plaintiff's solicitor had served a notice setting a time limit, but the period between 26th October and 21st December was a reasonable time in which the vendors could have complied with her requirements. The plaintiff was entitled to rescission, return of deposit, and damages. The counter-claim would be dismissed. Judgment for the plaintiff.

APPEARANCES: The plaintiff in person; *E. W. Griffith* (*Lamb, Goldsmith & Howard*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 91

Courts-Martial Appeal Court

MILITARY LAW: DESERTION: STATEMENT IN CERTIFICATE OF ARREST THAT SOLDIER WAS WEARING CIVILIAN CLOTHES WHEN ARRESTED

R. *v.* Mahoney

Lord Goddard, C.J., Hallett and Pearson, JJ.
19th November, 1956

Appeal against conviction.

The appellant, a private of the Middlesex Regiment, was convicted of desertion at a district court-martial held on 7th June, 1956, and sentenced to nine months' detention. The only evidence given for the prosecution was (1) that of a non-commissioned officer who produced a certified copy of the record of a declaration of a court of inquiry, pursuant to s. 163 (1) (*b*) of the Army Act, which stated that the appellant illegally absented himself without leave at Colchester on 9th October, 1955, and was still absent on 31st October, 1955, the day when the court of inquiry was held; and (2) a certificate of arrest by military authority, pursuant to s. 163 (1) (*jj*) of the Act, signed by an officer of the Royal Military Police certifying that the appellant was arrested at Midhurst on 13th April, 1956. That certificate also stated that at the time of his arrest the appellant was wearing civilian clothes. At the conclusion of the case for the prosecution, counsel for the appellant submitted that there was no case to answer as the appellant was entitled to be released on 2nd October, 1955, and that the prosecution had not proved that he was still liable for service; and that even if he was still liable there was no evidence that he was guilty of anything more than absence without leave. That submission was overruled. The appellant did not himself give evidence and no witnesses were called on his behalf. He appealed against conviction by leave of the court on the grounds (1) that there was no sufficient evidence of desertion; (2) that the evidence showed that he was no longer a serving soldier at the time of his arrest; (3) that there was no evidence that he was absent without leave at the time of his arrest. Before the appeal court, counsel for the appellant took the point that the certificate of arrest was inadmissible in view of the inclusion therein of the words "at the time of his arrest he was wearing civilian clothes."

LORD GODDARD, C.J., said that in accordance with s. 163 the finding of the court of inquiry was properly admitted—that showed that he had been absent from 9th to 31st October, 1955, which, coupled with the evidence of his arrest on 13th April, 1956, was ample evidence on which the court-martial could find that he intended to desert. But the statement in the certificate of arrest that he was wearing civilian clothes when arrested was improper, and the statement to the contrary in the Manual of Military Law (1951), 8th ed., p. 383, n. 17, was wrong. It was inadmissible in the certificate, although it could be made in verbal evidence. No objection was taken at the time, and the court would apply the proviso to s. 5 (1) of the Courts-Martial (Appeals) Act, 1951, as no substantial miscarriage of justice had occurred.

Appeal dismissed.

APPEARANCES: *W. R. Rees-Davies* (*Wilders & Sorrell*); *E. Garth Moore* (*Director of Army Legal Services*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 98

In Westminster and Whitehall

HOUSE OF LORDS

Progress of Bills

Read First Time :—

B.P. Trading Bill [H.L.] [20th December.
Blyth Harbour Bill [H.L.] [20th December.
Buckinghamshire County Council Bill [H.L.] [20th December.
Durham County Council (Barmston-Coxgreen Footbridge) Bill [H.L.] [20th December.
East Ham Corporation Bill [H.L.] [20th December.
Hastings Tramways Bill [H.L.] [20th December.
Liverpool Hydraulic Power Bill [H.L.] [20th December.
London County Council (General Powers) Bill [H.L.] [20th December.
Milford Docks Bill [H.L.] [20th December.
Newport Corporation (Water) Bill [H.L.] [20th December.
Port of London Bill [H.L.] [20th December.

Public Trustee (Fees) Bill [H.L.] [20th December.

To make further provision as to the fees chargeable by the Public Trustee ; and for purposes connected therewith.

Rating and Valuation Bill [H.C.] [21st December.

To reduce, during the currency of existing valuation lists, the rateable value of certain hereditaments ; to make further provision as to the amounts payable by way of rates or in lieu of rates by the British Transport Commission, the Central Electricity Authority and Area Gas Boards ; to amend the provisions of the Local Government Act, 1948, as to the ascertainment of the rateable value for an area ; and for purposes connected with the matters aforesaid.

Solicitors Bill [H.L.] [20th December.

To consolidate the Solicitors Acts, 1932 to 1956, and certain other enactments relating to solicitors, with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

Wakefield Corporation Bill [H.L.] [20th December.

Read Second Time :—

Cinematograph Films Bill [H.L.] [20th December.

Read Third Time :—

Nurses' Agencies Bill [H.L.] [20th December.
Nurses Bill [H.L.] [20th December.

HOUSE OF COMMONS

Progress of Bills

Read First Time :—

Coal Mining (Subsidence) Bill [H.C.] [20th December.

To provide for the execution of remedial works and the making of payments in respect of damage caused by subsidence resulting from the working and getting of coal or of coal and other minerals worked therewith ; for the execution of works to prevent or reduce such damage ; for the carrying out of remedial or preventive measures in connection with land drainage affected or likely to be affected by such damage ; and for purposes connected with the matters aforesaid.

Occupiers' Liability Bill [H.C.] [20th December.

To amend the law of England and Wales as to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there ; to make provision as to the operation in relation to the Crown of laws made by the Parliament of Northern Ireland for similar purposes or otherwise amending the law of tort ; and for purposes connected therewith.

STATUTORY INSTRUMENTS

Administration of Justice Act (Commencement) (No. 2) Order, 1956. (S.I. 1956 No. 1979 (C.17).)
Bahrain Removal of Prisoners Order, 1956. (S.I. 1956 No. 2031).
Borstal Rules, 1956. (S.I. 1956 No. 1987.) 5d.
Clean Air Act, 1956 (Appointed Day) Order, 1956. (S.I. 1956 No. 2022 (C.19).)
Coal Mines (Training) Regulations, 1956. (S.I. 1956 No. 2017.) 8d.
Control of Hiring (Vehicles) (Revocation) Order, 1956. (S.I. 1956 No. 2056.)
County Court Districts (Colne) Order, 1956. (S.I. 1956 No. 2000.)
County Court Funds (Amendment No. 2) Rules, 1956. (S.I. 1956 No. 2011 (L.23).) 5d.
Execution of Sentences of Death (Army) Regulations, 1956. (S.I. 1956 No. 1970.) 8d.
Firemen's Pension Scheme (No. 2) Order, 1956. (S.I. 1956 No. 2014.) 5d.
Food Hygiene (Amendment) (No. 2) Regulations, 1956. (S.I. 1956 No. 1984.)
Hire-Purchase and Credit Sale (Agreements (Control) (Amendment No. 2) Order, 1956. (S.I. 1956 No. 2055.) 5d.
Import Duties (Exemptions) (No. 16) Order, 1956. (S.I. 1956 No. 2005.) 5d.
Imprisonment and Detention (Air Force) Rules, 1956. (S.I. 1956 No. 1981.) 2s. 2d.
Iron and Steel Distribution (Revocation) Order, 1956. (S.I. 1956 No. 2028.)
London Cab Order, 1956. (S.I. 1956 No. 1988.)
Milk (Great Britain) (Amendment No. 2) Order, 1956. (S.I. 1956 No. 1989.) 5d.
Milk (Northern Ireland) (Amendment No. 2) Order, 1956. (S.I. 1956 No. 1990.)
Mines and Quarries (Draft Regulations) Rules, 1956. (S.I. 1956 No. 2018.) 5d.
Mines (Manner of Search for Smoking Materials) Order, 1956. (S.I. 1956 No. 2016.) 5d.
Motor Vehicles (Variation of Speed Limit) Regulations, 1956. 6d.
National Insurance (Contributions) Amendment Regulations, 1956. (S.I. 1956 No. 2020.) 5d.
National Insurance (Residence and Persons Abroad) Amendment Regulations, 1956. (S.I. 1956 No. 2021.) 5d.
National Library of Wales (Delivery of Books) (Amendment) Regulations, 1956 . (S.I. 1956 No. 1978.)
Premium Savings Bonds (Isle of Man) Regulations, 1956. (S.I. 1956 No. 2050.) 5d.
Prisoners Removal (Bahrain and St. Helena) Order, 1956. (S.I. 1956 No. 2032.)
Prison Rules 1956. (S.I. 1956 No. 1986.) 5d.
Rules of the Supreme Court (No. 3) 1956. (S.I. 1956 No. 2001 (L.22).) 8d.
Safeguarding of Industries (Exemption) (No. 9) Order, 1956. (S.I. 1956 No. 2006.)
Smoke Control Areas (Authorised Fuels) Regulations, 1956. (S.I. 1956 No. 2023.)
South Staffordshire Water (Hagley Pumping Station) Order, 1956. (S.I. 1956 No. 1985.) 5d.
Stopping up of Highways (Gloucestershire) (No. 22) Order, 1956. (S.I. 1956 No. 1992.) 5d.
Stopping up of Highways (Warwickshire) (No. 5) Order, 1956. (S.I. 1956 No. 1969.) 5d.
Stopping up of Highways (Warwickshire) (No. 14) Order, 1956. (S.I. 1956 No. 1982.) 5d.
Stopping up of Highways (Warwickshire) (No. 15) Order, 1956. (S.I. 1956 No. 1976.) 5d.
Wages Regulation (Boot and Shoe Repairing) (Holidays) Order, 1956. (S.I. 1956 No. 2009.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

Notes and News

Honours and Appointments

Mr. ROLAND CORK, deputy town clerk of Weymouth, has been appointed town clerk of Lytham St. Annes in succession to Mr. Walter Heat.

Mr. ARTHUR A. CRABTREE, deputy town clerk of Nuneaton, has been appointed town clerk in succession to Mr. Thomas Oldroyd, who will be retiring on 1st April for health reasons.

Mr. RICHARD GERAINT REES has been appointed a Metropolitan Magistrate.

Mr. ROLAND WAKEFIELD RUSSELL, deputy town clerk to Sidmouth Urban District Council, has been appointed town clerk to Tettenhall Urban District Council.

Mr. H. E. COLLIN and Mr. J. M. WILTON, assistant solicitors to the Norwich Union Life Insurance Society, have been appointed additional solicitors.

Personal Notes

Mr. G. V. Corney, who has resigned his post as clerk to Tettenhall Urban District Council to become a local government commissioner in British Guiana, was presented on 20th December, by the chairman of the council, on behalf of the councillors, with a silver cigarette box. He was later presented with a travelling case on behalf of his colleagues.

Mr. Albert Pearce has retired, after many years' service, from his post as magistrates' clerk at Batley.

Miscellaneous

Out of 409 candidates who sat for the Final Examination of The Law Society held on 5th, 6th, 7th and 8th November, 1956, 246 passed.

THE SOLICITORS ACTS, 1932 TO 1941

On 13th December, 1956, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon GEORGE WILLIAM BRIGGS, of No. 13 Birley Street, Blackpool, a penalty of fifty pounds, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

Obituary

MR. H. EVANS

Mr. Horace Evans, solicitor, of Heathfield, Sussex, died on 18th December at Eastbourne. He was admitted in 1929.

MR. J. Y. HOLT

Mr. James Yates Holt, solicitor, of Bromsgrove, Worcs., died recently, aged 94. He was admitted in 1886.

MR. R. W. SMITH

Mr. Reginald William Smith, solicitor, of Middlesbrough, died recently, aged 70. He was admitted in 1911.

MR. W. G. THOMAS

Mr. William Gough Thomas, solicitor, of Ellesmere, died on 24th December, aged 79. He was admitted in 1906 and was clerk to the Baschurch magistrates for over forty years.

MR. H. W. WILKES

Mr. Herbert William Wilkes, solicitor, of Birmingham, died on 19th December, aged 63. He was admitted in 1923.

Societies

The President, Sir Edwin Herbert, the Vice-President, Mr. I. D. Yeaman, and Council of THE LAW SOCIETY held a dinner at their Hall in Chancery Lane on 20th December. Among those present were: The High Commissioner for the Union of South Africa, Lord Layton, Lord Morton of Henryton, Lord Goddard (Lord Chief Justice), Sir Walter Monckton, Q.C., M.P., Sir Norman Brook, Lord Justice Birkett, Lord Justice Romer, Mr. Justice Sachs, Mr. Justice Lloyd-Jacob, Mr. Justice Hilbery, Mr. Justice Vaisey, Mr. Justice Ashworth, Sir Theobald Mathew, Sir Dingwall Bateson, Sir Sydney Littlewood, Judge Sir Edgar Dale, Sir Leonard Holmes, Air Chief Marshal Sir Dermot Boyle, Sir Charles Norton, Sir Roger Makins, Sir Harold Kent, Sir Harry Hylton-Foster, Q.C., M.P., Mr. Eric Davies, Mr. R. P. Baulkwill, Mr. L. E. Peppiatt, Mr. E. T. Maddox, his Hon. Brett Cloutman, V.C., Q.C., and Judge Alun Pugh.

Mr. J. Douglas Kewish, joint district registrar of the High Court of Justice, Liverpool, and joint registrar of Liverpool County Court, has been appointed president of the INCORPORATED LAW SOCIETY OF LIVERPOOL, and Mr. E. Holland Hughes vice-president.

The NORFOLK AND NORWICH INCORPORATED LAW SOCIETY held its annual dinner at Norwich on 30th November, when the president, Mr. R. B. Keefe, presided. The toasts were proposed by Canon Waddington and Mr. C. R. Kaile, and the responses by the President of The Law Society, Sir Edwin Herbert, and Dr. Lincoln Ralphs. Among the 157 members and guests were the presidents of neighbouring provincial law societies and the High Sheriff of Norfolk, Sir Edward Preston.

The Society held its annual meeting on 19th December, when the following officers were elected for the ensuing year: president, P. A. Bainbridge; vice-president, Col. C. T. A. Beevor; hon. secretary, E. Allan Rutherford; and hon. treasurer, J. T. E. Woolsey.

At the seventy-first annual general meeting of the DERBY LAW SOCIETY held at the Midland Hotel, Derby, on 13th December, Mr. H. W. Timms was elected president, and Mr. D. G. Gilman, vice-president for the ensuing year.

Mr. A. V. Nutt and Mr. A. J. Moore were re-elected hon. treasurer and hon. secretary respectively.

In 1857, as the reader can see from the reprint of the LAW ASSOCIATION'S advertisement in the inaugural issue of THE SOLICITORS' JOURNAL (p. xx), the minimum annual subscription to the profession's London charity was two guineas a year, the minimum single payment for life membership, twenty guineas. In 1957, in order that no London solicitor need be debarred from the benefits of membership, however young or struggling he or she may be, the minimum annual subscription is only one guinea, the minimum life subscription only ten guineas.

It is, however, vitally important that the number of subscribers shall increase to compensate for this reduction if the association's grants are to be adequate in these days when every other expense has doubled, trebled or even quadrupled. Full particulars and forms of application for membership may be obtained from the secretary, The Law Association, 25 Queensmere Road, Wimbledon Park, S.W.19.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).